

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF WISCONSIN
3 -----

4 UNITED STATES OF AMERICA,)
5)
6 Plaintiff,) Case No. CR 10-288
7 vs.) Milwaukee, Wisconsin
8 JAMES A. STUART, JR.,) December 6, 2011
9) 8:30 a.m.
10)
11 Defendant.) VOLUME 2 OF 3
12 -----

13 **TRANSCRIPT OF JURY TRIAL**
14 BEFORE THE HONORABLE CHARLES N. CLEVERT, JR.
15 UNITED STATES DISTRICT JUDGE, and a jury.
16

17 APPEARANCES:

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Proceedings recorded by computerized stenography, transcript
produced by computer aided transcription.



1 P R O C E E D I N G S (8:35 a.m.)

2 THE COURT: Case No. 2010-CR-288, United States of
3 America vs. James R. Stuart, Jr. This is day two of our jury
4 trial.

08:35 5 Counsel, do you wish to be heard?

6 MR. BERNHOFT: Yes, Your Honor. Move for Jencks
7 production with respect to government's witness Kristy Morgan
8 from the Ogden Service Center.

9 THE COURT: Repeat that, please?

08:35 10 MR. BERNHOFT: Yes, Your Honor. Move for production
11 of Jencks material respecting the government's witness Kristy
12 Morgan, the Service Center witness from Ogden, Utah.

13 Ms. Morgan testified that she's testified previously
14 in about 60 cases. My understanding of her testimony, she's the
08:36 15 witness coordinator at Ogden, been there a long time, has
16 drafted some of these notice letters and form letters that have
17 been entered into evidence, and we believe that her testimony in
18 the prior cases is mandatorily produced under the Jencks Act.

19 MR. JACOBS: Your Honor, the government disagrees.
08:36 20 The fact that she's testified previously doesn't mean that it
21 falls within 18 U.S.C. 3500(b). That relates to the subject
22 matter as to which this witness has testified. Her testimony
23 here related specifically as to the records concerning
24 Mr. Stuart. And she's given no prior testimony or there are no
08:36 25 prior recorded statements pertaining to Mr. Stuart's matter in

1 this case. The fact that some witness has testified ever
2 anyplace else doesn't turn those transcripts into Jencks
3 material.

4 THE COURT: I would generally agree, Counsel. Is
08:37 5 there something specific that you can refer to suggesting that
6 prior testimony of Ms. Morgan would be in the nature of
7 discoverable information in this proceeding?

8 MR. BERNHOFT: Yes, Your Honor. Ms. Morgan testified
9 regarding the management of documents at the Frivolous
08:37 10 Correspondence Unit there that she's involved with. She's
11 involved with drafting these letters, she testified to that.
12 And these letters are -- form part of the government's core case
13 in chief.

14 And in previous trials or other evidentiary
08:37 15 proceedings where she testified on oath, she may have made
16 statements regarding the Frivolous Correspondence Unit, her
17 drafting of these letters, et cetera, that could be relevant to
18 cross-examination in terms of impeachment, prior inconsistent
19 statements and other matters.

08:38 20 THE COURT: Specifically, the question relates to
21 statements in the possession of the government. Mr. Jacobs has
22 indicated that the witness -- in fact, the witness indicated
23 that she testified previously in multiple cases. Her testimony
24 in those various cases would not necessarily be in the nature of
08:39 25 statements that would be discoverable or mandatorily subject to

1 production in this particular case.

2 There may or may not have been a transcript made of
3 various testimony given by this person. And even if there was a
4 transcript, it wouldn't necessarily be in the exclusive
08:40 5 possession of the government. That would be a record of court
6 proceedings.

7 And so, if you are merely asking for transcripts of
8 court testimony, the government is not obligated, under
9 18 U.S.C. Section 3500, to produce such transcripts in this
08:40 10 case. Your motion is denied.

11 MR. BERNHOFT: Thank you, Judge.

12 THE COURT: Ms. Morgan should come forward.

13 You remain under oath. You may proceed. It's
14 cross-examination.

08:41 15 MR. JACOBS: The jury's not in, Judge.

16 THE COURT: Oh.

17 MR. BERNHOFT: You panicked me, Your Honor.

18 THE COURT: Mr. Hill, would you please get our jury.
19 I didn't even look to the right.

08:42 20 (Jury in at 8:42 a.m.)

21 THE COURT: Good morning, members of the jury.

22 JURY IN UNISON: Good morning.

23 THE COURT: We're ready to continue. You may proceed.

24 MR. BERNHOFT: Do we have the Elmo up and running?

08:43 25 THE COURT: One second here. I blanked the monitors

1 at this stage because I don't know what's on the screen.

2 MR. BERNHOFT: Yes, Your Honor. We're going to be
3 querying Ms. Morgan on letter correspondence that has been
4 stipulated to by the parties as to being admissible, and we'll
08:44 5 be going through them sequentially in chronological order. And
6 I can represent to the court that each document is stipulated as
7 admitted.

8 THE COURT: You have to identify everything for the
9 record.

08:44 10 MR. BERNHOFT: Yes, sir.

11 KRISTY MORGAN, GOVERNMENT WITNESS, PREVIOUSLY SWORN

12 CROSS-EXAMINATION

13 BY MR. BERNHOFT:

14 Q. Good morning, Ms. Morgan.

08:44 15 A. Good morning.

16 Q. I'm Attorney Bob Bernhoft, and I represent Jim Stuart in
17 this federal criminal tax case.

18 Now, yesterday, Ms. Morgan, you had testified
19 regarding various letters and correspondence that had been sent
08:44 20 by and between Mr. Stuart and the Internal Revenue Service; is
21 that correct?

22 A. Yes, it is.

23 Q. Thank you.

24 And if I can show the witness a copy of a document
08:44 25 that's been marked as G-20. That's Government's 20.

1 Can you tell us what that is, please?

2 A. This is a 916(c) letter to James and Marjorie Stuart.

3 Q. Can you tell me what the date of that letter is, please?

4 A. The date on this letter is November 16th, 2005.

08:45 5 Q. Excellent. Thanks very much.

6 Your Honor, I would move admission of G-20 and
7 permission to publish.

8 THE COURT: Is there any objection?

9 MR. JACOBS: No, Your Honor.

08:45 10 THE COURT: It's received.

11 (Exhibit 20 offered and received.)

12 BY MR. BERNHOFT:

13 Q. And, Ms. Morgan, can you see that in the screen there?

14 A. Yes, I can.

08:45 15 Q. And can you tell me what tax period this letter is
16 regarding, please.

17 A. The tax period is ending December 31st --

18 THE COURT: One second. Can the jury read the
19 document?

08:46 20 JURORS IN UNISON: No.

21 THE COURT: One second.

22 MR. BERNHOFT: Is that better? All right.

23 BY MR. BERNHOFT:

24 Q. And, Ms. Morgan, can you tell me what tax period this letter
08:46 25 is regarding?

1 A. For the tax period ending December 31st, 2002.

2 Q. All right. And if you see the language under "dear
3 taxpayer," that's been highlighted with the yellow marker, could
4 you read that for me, please?

08:46 5 A. The two paragraphs.

6 Q. Please.

7 A. "We are unable to process your claim for the tax periods
8 above because your supporting information is not complete. If
9 you have more information you did not send with the claim, you
08:46 10 may file another claim and attach your information.

11 "Your amended tax return was received and complete.
12 We ask that you submit a signed copy that includes all
13 correspondence forms and schedules. Please include your revised
14 copy of the W-2 Form to support the changes you made to your
08:47 15 return."

16 Q. Thank you. And based on your knowledge of the documents and
17 your testimony yesterday, is it fair to say that this is an IRS
18 response letter to Mr. Stuart filing that 1040X amended return
19 for 2002?

08:47 20 A. Yes, asking for additional information.

21 Q. Thank you.

22 Handing the witness a copy of what's been marked G-21.

23 Can you tell me what that document is, please?

24 THE COURT: It's not necessary to say "G" inasmuch as
08:47 25 the exhibit is just numbered.

1 MR. BERNHOFT: Thank you, Judge.

2 THE WITNESS: This is a letter to Dorothy M. Baylis
3 from James A. Stuart.

4 BY MR. BERNHOFT:

08:47 5 Q. All right. Thank you very much.

6 Move admission of 21 and permission to publish, Your
7 Honor.

8 THE COURT: Objection?

9 MR. JACOBS: None.

08:47 10 THE COURT: It's received.

11 (Exhibit 21 offered and received.)

12 MR. BERNHOFT: Thank you.

13 BY MR. BERNHOFT:

14 Q. Ms. Morgan, do you see the second paragraph there?

08:48 15 A. Yes.

16 Q. And I've got some highlighted text there. It's a brief
17 text. Could you read that, please, from "my only"?

18 A. "My only option, therefore, was to fill out and file my 2002
19 Form 1040X."

08:48 20 Q. And then the second paragraph, please, also in highlighted
21 part?

22 A. "In part 2 of the 1040X, I have listed the line numbers that
23 were changes were made. Both of those changes are reflected on
24 the Form 4852 attached to it. I do not see that there are any
08:48 25 other forms and schedules needed to explain the changes being

1 made."

2 Q. Thank you. And, Ms. Morgan, do you know what an IRS
3 Form 4852 is?

4 A. I do.

08:49 5 Q. And what is that form, please?

6 A. That's when there could be a correction that needs to be
7 made on a W-2, that form can be used.

8 Q. And Mr. Stuart had attached that Form 4852 to his 2002 1040X
9 amended return?

08:49 10 A. Yes, he did.

11 Q. Thank you.

12 Handing the witness a copy of what's been marked 22.

13 Could you tell me what that document is, Mrs. Morgan?

14 A. This is a letter 105(c) to James A. and Marjorie Stuart.

08:49 15 MR. BERNHOFT: Move to admit. Permission to publish.

16 MR. JACOBS: No objection, Judge.

17 THE COURT: Received.

18 (Exhibit 22 offered and received.)

19 MR. BERNHOFT: Thank you.

08:49 20 THE COURT: Proceed.

21 BY MR. BERNHOFT:

22 Q. Can you tell me what the date of that letter is,
23 Mrs. Morgan?

24 A. I really can't see that clearly.

08:50 25 Q. Okay. Autofocus. Can you see the date there?

1 A. Yes. January 9th, 2006.

2 Q. And what tax period does this IRS letter to Mr. Stuart refer
3 to?

4 A. Tax period ending December 31st, 2002.

08:50 5 Q. Thank you. And I'm going to refer your attention to the
6 body of the letter here. And I'm going to zoom in just a bit.
7 Could you read that first paragraph, please?

8 A. "This letter is your notice that we've disallowed your claim
9 for credit for the period shown above."

08:50 10 Q. And that second paragraph, please?

11 A. "Why we cannot allow your claim. We still do not show any
12 corrected information on your W-2. We may not accept your claim
13 information on your W-2 without supporting correlation documents
14 --"

15 THE REPORTER: Repeat that, please.

16 THE WITNESS: Yes.

17 "We still do not have any corrected information on
18 your W-2. We may not accept your change information on your W-2
19 without supporting correlation documentation from your
08:51 20 employer."

21 BY MR. BERNHOFT:

22 Q. Could I refer you to that last sentence that's highlighted
23 there next to my pen?

24 A. "You have the right to appeal our decision to disallow your
08:51 25 claim."

1 Q. And, Ms. Morgan, this IRS letter to Mr. Stuart also refers
2 to the 1040X submitted return and Form 4852 that he filed for
3 2002?

4 A. It's regarding the claim.

08:51 5 Q. Thank you.

6 THE COURT: Please note, Counsel, that these exhibits
7 are all subject to redaction as you will note from looking at
8 the placards under the glass on your tables.

9 BY MR. BERNHOFT:

08:51 10 Q. Handing the witness a copy of what's been marked as 23.

11 And, Mrs. Morgan, could you review that document and
12 tell me what that document is, please.

13 (Witness peruses document.)

14 A. This is correspondence dated January 24th, 2006, to the
08:52 15 Internal Revenue Service, Office of Appeals, from James Stuart.

16 BY MR. BERNHOFT:

17 Q. Thank you.

18 Move to admit, permission to publish.

19 MR. JACOBS: No objection.

08:52 20 THE COURT: Received.

21 (Exhibit 23 offered and received.)

22 MR. BERNHOFT: Thank you.

23 BY MR. BERNHOFT:

24 Q. Do you see that, Mrs. Morgan?

08:52 25 A. Not very well.

1 Q. Okay. How is that?

2 A. Better.

3 Q. And what's the title of this document there, underlined and
4 highlighted in yellow?

08:53 5 A. "Affidavit of an Administrative Appeal and Request For
6 Cure."

7 Q. All right. And if I could refer your attention to what
8 appears to be paragraph 4, highlighted in relevant part? Could
9 you read that for me, please?

08:53 10 A. "Affiant hereby requests either, A, an open office
11 administrative appeal hearing at the Kansas City, Missouri IRS
12 Service Center to resolve the 2002 on such date that it is
13 convenient for all parties."

14 Q. And is it fair to say that Mr. Stuart is requesting an
08:53 15 appeals hearing respecting his denial, the IRS's denial of his
16 2002 amended claim?

17 A. That's what the statement says.

18 Q. Thank you.

19 And referring to page 2 of this letter.

20 Autofocus again.

21 Referring, Ms. Morgan, your attention to 6-B there,
22 the second highlighted section next to my pen, could you read
23 that for me, please?

24 A. "Affiant has communicated in a timely manner and in good
08:54 25 faith all notices sent by the Commissioner regarding this tax

1 matter."

2 Q. And then, just moving down to sub C there, the highlighted
3 section, could you read that for me?

08:54 4 A. "Affiant's earnings are paid to him in exchange for his time
5 and labor and are not identified within the limited definitions
6 of IRC" -- I believe that is 34 -- I can't read the tax code on
7 that.

8 Q. Let me autofocus and zoom. How is that?

08:55 9 A. That's better. "3401(a) and 3121(a). Affiant received no
10 such IRC 3401 or 3121 wages from New Age Chemical in his
11 earnings in exchange for his time and labor."

12 THE COURT: Read that again, please. The last line.

13 THE WITNESS: The last line?

14 "Affiant received no such IRC 3401 or 3121 wages from
08:55 15 New Age Chemical as his earnings in exchange for his time and
16 labor."

17 BY MR. BERNHOFT:

18 Q. Thank you. Mrs. Morgan, are you familiar with the acronym
19 IRC?

08:55 20 A. I am.

21 Q. And what does that stand for, please?

22 A. Internal Revenue Code.

23 Q. Are you familiar with those code sections, 3401(a) and
24 3121(a)?

08:55 25 A. No.

1 Q. Thank you.

2 Handing the witness a copy of what's been marked 24.

3 Mrs. Morgan, could you take a look at that and tell me
4 what that is, please.

08:55 5 (Witness peruses document.)

6 A. This is a letter to the Internal Revenue Service, Office of
7 Appeals, from James A. Stuart, dated March 9, 2006.

8 Q. Thank you.

9 Move to admit. Permission to publish.

08:56 10 MR. JACOBS: No objection.

11 THE COURT: Received.

12 (Exhibit 24 offered and received.)

13 MR. BERNHOFT: Thank you.

14 BY MR. BERNHOFT:

08:56 15 Q. Could you tell me what is the date on that letter,
16 Mrs. Morgan?

17 A. March 9, 2006.

18 Q. Thank you.

19 Move this down to the text area.

08:56 20 And, Mrs. Morgan, referring to the highlighted
21 portions there, could you read those for the jury, please.

22 A. The first paragraph starting "on September"?

23 Q. Please.

24 A. "On September 19th, 2005, I submitted a 1040X Amended Income
08:57 25 Tax Return accompanied by a Form 4852. The material submitted

1 as to self -- was self-explanatory.

2 "On November 16th, 2005, I received a form letter
3 stating that you were unable to process the claim as it was not
4 complete, with no explanations. I answered this letter asking
08:57 5 what was not complete."

6 Q. Could you continue to that third paragraph, please?

7 A. "On January 9th, 2006, I received another letter stating
8 that you had disallowed my claim entirely because I didn't show
9 any corrected information on my W-2, which the Form 4852 was
08:58 10 supposed to do. I do not think that this is a statutory
11 explanation taken from the Internal Revenue Code."

12 Q. And that fourth paragraph there?

13 A. "I responded with an Affidavit of Administrative Appeal and
14 Request For Cure and am still waiting for a reply."

08:58 15 Q. And then if you could just take a look at that citation to
16 the code. Could you just read that for me, please?

17 A. "26 U.S.C. 6402(k), paren, P.L. 105-206, 3505."

18 Q. And the text of that citation, please?

19 A. "Explanation of Reason For Refund Disallowance: In the case
08:59 20 of a disallowance of a claim for refund, the secretary shall
21 provide the taxpayer with an explanation for such disallowance."

22 Q. Thank you.

23 Handing the witness a copy of what's been marked as
24 Defendant's 1 (sic).

08:59 25 Mrs. Morgan, could you review that document and tell

1 me what that is, please.

2 A. This is a letter, 86C, to James and Marjorie Stuart from the
3 Internal Revenue Service.

4 Q. Thank you.

08:59 5 Move to admit, permission to publish.

6 MR. JACOBS: No objection, Judge.

7 THE COURT: Received.

8 (Exhibit 1001 offered and received.)

9 BY MR. BERNHOFT:

09:00 10 Q. What is the date of this letter from IRS to Mr. Stuart?

11 A. April 5th, 2006.

12 Q. And to the left of my pen there, what tax period is this
13 letter related to?

14 A. The 2002 tax period.

09:00 15 Q. And referring you to that first highlighted paragraph, could
16 you read that for the jury, please?

17 A. Could you slide that up?

18 Q. Sure I can.

19 A. Thank you. "We have forwarded your request to appeal to the
09:00 20 Milwaukee Appeals Office. They will respond to you within 60
21 days. You do not need to do anything further."

22 Q. Thank you.

23 Handing the witness a copy of what's been marked
24 Defendant's 1002.

09:00 25 Mrs. Morgan, could you take a look at that and tell me

1 what that is, please?

2 A. This is a letter from the Office of Appeals dated April
3 11th, 2006, to Mr. and Mrs. Stuart.

4 Q. Thank you.

09:01 5 THE COURT: One second, please.

6 MR. BERNHOFT: Permission to publish.

7 THE COURT: Hold, please.

8 (Brief pause.)

9 THE COURT: Do you have a premarked list of your
09:01 10 exhibits?

11 MR. BERNHOFT: Yes. Given to the clerk yesterday,
12 Your Honor.

13 THE COURT: I have to get that. We'll proceed for
14 now.

09:01 15 MR. BERNHOFT: Mr. Tollefson can hand up copies for
16 the court if you wish.

17 THE COURT: Yes, please. I don't see an exhibit list
18 with the numbers that you just used.

19 MR. BERNHOFT: Yeah, it was provided to the clerk
09:02 20 yesterday, Your Honor. I believe Mr. Tollefson can obtain a
21 copy.

22 THE COURT: The defense exhibits should be starting at
23 1001, and you previously referred to as defense 1. So defense 1
24 is the same as 1001?

09:02 25 MR. BERNHOFT: Yes, sir. Yes. I'll make the proper

1 reference.

2 THE COURT: All right. So the previous exhibit number
3 should have been Exhibit 1001 and not 1. All right. Again,
4 these documents are received subject to redaction as required.

09:03 5 MR. BERNHOFT: Thank you, Your Honor.

6 Handing a copy of what's been marked Defendant's 1002
7 to the witness.

8 BY MR. BERNHOFT:

9 Q. Mrs. Morgan, could you tell me what that document is,
09:03 10 please?

11 A. This is a letter from the Internal Revenue Service Appeals
12 Office to Mr. and Mrs. Stuart, dated April 11th, 2006.

13 Q. Thank you.

14 MR. BERNHOFT: Move to admit, permission to publish.

09:03 15 MR. JACOBS: I have no objection, Judge.

16 THE COURT: It's received.

17 (Exhibit 1002 offered and received.)

18 MR. BERNHOFT: Thank you, Judge.

19 BY MR. BERNHOFT:

09:03 20 Q. And, Mrs. Morgan, referring your attention to that
21 highlighted portion by the pen, what date is that letter from
22 IRS Appeals to Mr. Stuart?

23 A. April 11th, 2006.

24 Q. I'm referring you down to that first paragraph highlighted,
09:04 25 could you read that for the jury, please.

1 A. "This letter is our acknowledgment that we received your
2 case for consideration in our Milwaukee Appeals Office on
3 April 3rd, 2006."

4 Q. Thank you.

09:04 5 Handing the witness a copy of what's been marked
6 Defendant's 1003.

7 Mrs. Morgan, could you look at that and tell us what
8 that is, please?

9 A. This is a letter to the Internal Revenue Service, Kansas
09:04 10 City, Missouri office, from James A. Stuart with an attachment.

11 Q. With attachments. Thank you.

12 Move to admit permission to publish 1003.

13 THE COURT: Any objection?

14 (No response.)

09:05 15 THE COURT: It's received.

16 (Exhibit 1003 offered and received.)

17 MR. BERNHOFT: Thank you.

18 BY MR. BERNHOFT:

19 Q. Ms. Morgan, referring your attention to that second
09:05 20 paragraph with the yellow highlight. Could you read that to the
21 jury, please?

22 A. "The company has listed payments as wages as defined in IRC
23 Section 3401(a) and 3121(a) for fear of retaliation from the
24 IRS. I am rebutting their claim stating that I am a
09:05 25 private-sector citizen, nonfederal employee, employed by a

1 private-sector company, nonfederal entity, as defined in Section
2 3401(c)(d). I am not employed in the trade or business nor am I
3 an officer of a corporation. The amounts listed as withheld in
4 the W-2 is correct, however."

09:06 5 Q. Thank you. Mrs. Morgan, I'm going to refer you to page 5 of
6 D-1003. This page 5 of 1003. Do you recognize this information
7 that's contained on this page?

8 A. Yes, I do.

9 Q. And what sort of information page is this, in your
09:06 10 experience?

11 A. This is the tracking of the document through the IRS.

12 Q. And when you say "tracking of the document," how does that
13 work?

14 A. Which area receives that document they receive that
09:07 15 information in their area.

16 Q. Now, I note that on page 1 of D-1003, that Mr. Stuart sent
17 this to the Internal Revenue Service/Kansas City. And yet, when
18 I refer to the highlighted section there, where has this been
19 routed to?

09:07 20 A. To the Frivolous Filer Operation, Ogden, Utah.

21 Q. Okay. And why would Mr. Stuart's letter to Kansas City IRS
22 be routed to the Frivolous Correspondence Unit in Ogden, Utah?

23 A. That's where the letter came from, concerning that claim was
24 from that area. That's where the claims are being worked,
09:07 25 that's where the correspondence goes.

1 Q. But why would it be routed to this Frivolous Correspondence
2 Unit from Kansas City?

3 A. From Kansas City?

4 Q. Yes.

09:07 5 A. Because the case is opened in Ogden.

6 Q. I see. Who determines whether correspondence from taxpayers
7 is frivolous?

8 A. Basically, the determination is made through our area
9 counsel, then referred to the Ogden area. That's a consolidated
09:08 10 area. There's only one group that works frivolous documents and
11 that's in Ogden.

12 Q. I see. I'm going to refer you to page 1 here briefly. So
13 based on that testimony, Mr. Stuart sends a letter to IRS in
14 Kansas City regarding his 2002 amended 1040X, and your testimony
09:08 15 is IRS counsel reviewed this letter, determined it was
16 frivolous, and caused it to be routed to Ogden, Utah?

17 A. No, that's incorrect.

18 Q. Could you tell me then how this works?

19 A. The case is opened in Ogden, the correspondence reviewed
09:08 20 there. Frivolous positions are determined by counsel first
21 initially when they come into the office.

22 Q. Are these letters individually reviewed by IRS counsel for
23 frivolity?

24 A. No.

09:09 25 Q. So then somebody from IRS Kansas City looks at this letter

1 and just reroutes it to Ogden because it's frivolous?

2 A. Because they see the open control in Ogden that someone is
3 working the case.

4 Q. Could you describe this open control designation, please?

09:09 5 A. Yes. That's the person that's working the case that has the
6 claim to make the determination and correspond back and forth
7 with the taxpayer.

8 Q. And how would the person who received this at IRS Kansas
9 City receive that open control designation such that it would be
09:09 10 routed to Frivolous Correspondence in Ogden?

11 A. In Ogden there is a control area where workload is managed
12 so that the number of the tax examiner would appear on a control
13 base that everyone that works for the IRS can see that and
14 properly route the documents.

09:09 15 Q. Is that control database, is that the Integrated Data
16 Retrieval System?

17 A. Yes, it can be.

18 Q. And is the acronym IDRS for that?

19 A. Yes.

09:10 20 Q. Okay. So then some IRS person in Kansas City opens up or
21 punches in the EARPL code to get into the IDRS respecting
22 Mr. Stuart, and they see a control code and that's how they know
23 to route that letter to Frivolous Correspondence?

24 A. I didn't understand your question as far as research.

09:10 25 Q. All right. You're indicating that this control module that

1 indicates a case is opened, or frivolous filer case is opened in
2 Ogden, is accessible to IRS employees through the IDRS System?

3 A. That's correct.

4 Q. And so somebody in Kansas City looked into the IDRS system,
09:10 5 reference Mr. Stuart's files, his individual master file I
6 assume, correct?

7 A. They're searching by Social Security number.

8 Q. Right. And that would pull up his IMF, his individual
9 master file?

09:10 10 A. Correct.

11 Q. And then they would see this control module which would tip
12 them off that they should send this to Ogden to the Frivolous
13 Correspondence Unit?

14 A. Right, because they have the complete case.

09:11 15 Q. Thank you. I'm going to refer you briefly to page 6 of this
16 document that's already been admitted.

17 THE COURT: Again, reference the document number,
18 please.

19 MR. BERNHOFT: Yes. D-1003.

09:11 20 BY MR. BERNHOFT:

21 Q. And, Mrs. Morgan, do you recognize this document here in
22 your experience?

23 A. Yes, I do.

24 Q. And what is that document?

09:11 25 A. It's an internal document used to route information.

1 Q. All right. And so, under "Remarks" what does it say there?

2 A. "Frivolous correspondence."

3 Q. And so that's the reason this is being routed up to Ogden.

4 A. Correct.

09:11 5 Q. Thank you.

6 Now, Mrs. Morgan, I believe you testified yesterday
7 that you had drafted the notice letter to Mr. Stuart that
8 indicated that his positions were frivolous, without merit,
9 without legal basis, and had been repeatedly rejected by the
10 federal courts; is that correct?

09:12

11 A. Not to Mr. Stuart, no.

12 Q. You drafted the template, the form letter.

13 A. Initial letter, yes.

14 Q. Yeah. And so, in that letter it indicates that Mr. Stuart's
15 correspondence is frivolous. But when you drafted the template
16 for that letter that would be sent to various taxpayers like
17 Mr. Stuart, what's the criteria for determining that a taxpayer
18 letter is frivolous?

09:12

19 A. The tax examiners have guidelines that they would go
20 through, through their procedures, and identify different
21 language or different types of arguments on the tax return.

09:12

22 Q. Well, what type of language would be a criteria for
23 determining a taxpayer letter was frivolous?

24 A. If in that correspondence it said wages are not income, if
25 they go through and quote different parts of the code that are

09:13

1 incorrect as far as their filings. Different things like that
2 would be key words that they would look for.

3 Q. A taxpayer citing to portions of the Internal Revenue Code
4 might end you up in Frivolous Correspondence in Ogden?

09:13 5 A. It may end there, yes.

6 Q. Handing the witness a copy of what's been marked as D-1004.

7 Mrs. Morgan, could you take a look at that, please,
8 and tell me what that is.

9 A. This is a letter --

09:13 10 THE COURT: One second. Counsel, please approach.

11 (At side bar on the record.)

12 THE COURT: Just for the record, you're going to use
13 designations that will not appear on the exhibits as they go
14 into the record. If this transcript is reviewed, someone
09:14 15 reviewing the transcript without knowledge of the proceeding
16 will go through these materials and not see a D, not see an A,
17 not see a G or whatever.

18 MR. BERNHOFT: I'm well advised, Judge.

19 THE COURT: Okay. And just so that it's clear, all of
09:14 20 these documents have your client's Social Security number.

21 MR. BERNHOFT: Yes.

22 THE COURT: These will be put into a public file.

23 MR. BERNHOFT: Yes.

24 THE COURT: They will be accessible by the world.

09:14 25 MR. BERNHOFT: Yes.

1 THE COURT: The world will see your client's Social
2 Security number.

3 MR. BERNHOFT: Yes.

4 THE COURT: The world will be able to steal your
09:14 5 client's Social Security number and use it any way they want to.

6 MR. BERNHOFT: We will redact prior to admission into
7 evidence.

8 THE COURT: That's why I've made the statements that
9 I've made. And on the table it tells you don't offer them with
09:15 10 the Social Security numbers and personal information displayed.
11 Anyone in the courtroom can see this information. Just so that
12 you know.

13 MR. BERNHOFT: Yes, I do. And I appreciate the
14 court's admonition.

09:15 15 MR. JACOBS: Judge, could I just get a five-minute
16 break to run to the restroom for a second?

17 THE COURT: Sure.

18 (End of discussion at side bar.)

19 THE COURT: We're going to take a very short break.
09:15 20 You may return to the jury room with the usual admonition not to
21 discuss the case or do any research whatsoever. You may leave
22 your notebooks in your chairs. We will be back into the
23 courtroom very quickly.

24 THE BAILIFF: All rise.

09:15 25 (Jury out at 9:15 a.m.)

1 (Recess taken at 9:16 a.m., until 9:25 a.m.)

2 THE COURT: Are you ready to proceed?

3 MR. BERNHOFT: Yes, sir.

4 (Jury in at 9:26 a.m.)

09:26 5 THE COURT: Proceed.

6 MR. BERNHOFT: May I, Your Honor?

7 THE COURT: You may.

8 MR. BERNHOFT: Thank you.

9 BY MR. BERNHOFT:

09:26 10 Q. Mrs. Morgan, handing you a copy of what's been marked 1004.

11 Could you tell me what that document is, please?

12 A. This is the letter 2645(c) to James Stuart from the Internal
13 Revenue Service.

14 Q. Thank you.

09:26 15 Move admission of 1004. Permission to publish.

16 MR. JACOBS: I have no --

17 THE COURT: Received.

18 (Exhibit 1004 offered and received.)

19 BY MR. BERNHOFT:

09:27 20 Q. Mrs. Morgan, referring your attention to the upper
21 right-hand corner, what is the date of that letter from IRS to
22 Mr. Stuart?

23 A. May 16th, 2006.

24 Q. All right. And referring to the tax period, what tax period
09:27 25 is this letter referencing from Kansas City IRS?

1 A. December 31st, 2005.

2 Q. And the form number, please?

3 A. The Form 1040.

09:27 4 Q. Thank you. And, Mrs. Morgan, referring your attention to
5 the highlighted portion, could you read that for the jury,
6 please.

7 A. "Thank you for your correspondence received April 14th,
8 2006."

9 Q. And that second paragraph, please?

09:27 10 A. "We haven't resolved this matter because we haven't
11 completed all research necessary to complete a response. We
12 will contact you again within 45 days to let you know what
13 action we are taking. You don't need to do anything further on
14 this matter."

09:28 15 Q. Thank you. Ms. Morgan, handing you a copy of what's been
16 marked as 1005, could you tell me what that is, please.

17 A. This is a letter to Dorothy M. Baylis from James A. Stuart,
18 dated May 19, 2006.

19 Q. And does it tell on there where Ms. Baylis is working?

09:28 20 A. Not that I see from the letter.

21 Q. All right. Thank you.

22 Move admission of 1005. Permission to publish.

23 MR. JACOBS: Judge, I'd like to be heard on this.

24 THE COURT: All right.

09:29 25 (At side bar on the record.)

1 MR. JACOBS: Judge, again, I just got this so I
2 haven't had time to compare it, but my belief is this is part of
3 a series of letters that we do not have an agreement as to their
4 admissibility. And this is simply a letter from the defendant.

09:30 5 MR. BERNHOFT: No. All of these are comprised and
6 compares within the stipulated ranges of the stipulation.

7 MR. JACOBS: I just wasn't sure if you knew which
8 exhibit this was.

9 MR. BERNHOFT: We were scrupulously careful.

09:30 10 MR. JACOBS: We had a series of this. Do you know
11 what the corresponding government exhibit for this is?

12 MR. BERNHOFT: No. The reason that these are numbered
13 1005 as defendant's exhibits is you didn't exhibit them. So
14 just for the court's -- what we have is an aggregate of
09:30 15 stipulated documents, some of which the government exhibited,
16 some of which they didn't. And so the ones that we're going to
17 use that the government didn't exhibit we've marked them.

18 MR. JACOBS: Okay. I just wanted to clarify. I just
19 got this so I'm not certain which exhibit this is. There are a
09:30 20 series of letters that we object to and I just want to know --

21 MR. BERNHOFT: It's comprised in the stipulation.

22 MR. JACOBS: Very well.

23 THE COURT: This contains two sheets.

24 MR. JACOBS: Right.

09:31 25 THE COURT: Second sheet part of Exhibit 1005?

1 MR. BERNHOFT: Yes. And I'm going to redact that
2 right now.

3 THE COURT: Very well. Thank you.

4 (End of discussion at side bar.)

09:31 5 THE COURT: Proceed.

6 MR. BERNHOFT: Thank you, Judge. I believe where we
7 left off I moved admission and requested to publish?

8 MR. JACOBS: And I have no objection, Judge.

9 THE COURT: It's received.

09:31 10 MR. BERNHOFT: Thank you.

11 (Exhibit 1005 offered and received.)

12 BY MR. BERNHOFT:

13 Q. Mrs. Morgan, directing your attention to what's been marked
14 and admitted as 1005. Could you read the language in that
09:32 15 address block below Ms. Dorothy M. Baylis?

16 A. It states, "Operation manager, Internal Revenue Service,
17 Kansas City, Missouri."

18 Q. All right. So this is Mr. Stuart corresponding with
19 Ms. Baylis in Kansas City IRS.

09:32 20 A. Correct.

21 Q. Thank you. And could you read that first paragraph for me,
22 please?

23 A. "Today I received a letter with your signature stating we
24 haven't resolved this matter because we haven't completed all
09:32 25 the research necessary for a complete response."

1 Q. And that second paragraph, please?

2 A. "On May 8, 2006, I also received a letter headed, We Changed
3 Your Estimated Tax Total, and the change reflected was not what
4 was entered on my 1040."

09:32 5 Q. Zoom that just a touch. And that final third paragraph
6 there that's circled and highlighted, please?

7 A. "Also today I contacted the IRS at the telephone number
8 shown on the letter and spoke with Mr. Blackwell, number
9 6206212, who was very helpful. Apparently, according to
09:33 10 Mr. Blackwell, there was a mistake in transcribing the
11 information from my 1040 to one of your Internal Revenue (sic)
12 forms--"

13 THE COURT: Read that again, please.

14 THE WITNESS: "Apparently, according to Mr. Blackwell,
09:33 15 there was a mistake in transcribing the information from my 1040
16 to one of your Internal Revenue (sic) forms."

17 THE COURT: Is the word "revenue" there?

18 THE WITNESS: I'm not seeing "revenue."

19 BY MR. BERNHOFT:

09:33 20 Q. I think it's "one of your internal forms"?

21 A. "One of your internal forms." Sorry. "And the amount,
22 \$25,919.52, was entered on line 65, whereas on the 1040 it was
23 entered on line 64."

24 Q. Thank you. Mrs. Morgan, handing you a copy of what's been
09:34 25 marked as 1006, could you tell me what that document is, please?

1 A. This is a letter to Isela H. Strong, Internal Revenue
2 Service, from James A. Stuart.

3 Q. Thank you.

4 Move admission of 1006. Permission to publish.

09:34 5 MR. JACOBS: I have no objection.

6 THE COURT: Received.

7 (Exhibit 1006 offered and received.)

8 MR. BERNHOFT: Thank you.

9 BY MR. BERNHOFT:

09:34 10 Q. And could you tell me what the date on that letter is,
11 please?

12 A. June 13, 2006.

13 Q. Thank you. And, Mrs. Morgan, could you read that
14 highlighted text in that first paragraph, please, starting with
09:35 15 60?

16 A. "The 60 days lapsed on the 5th of this month without any
17 word. When I called, I was informed that you were out for the
18 month of June."

19 Q. And for that second highlighted sentence, please?

09:35 20 A. "This matter has dragged on for much too long and I would
21 like to get it resolved."

22 Q. And then that last sentence highlighted starting "I think"?

23 A. "I think that after reviewing my situation, you will find
24 that I have followed the law to the letter."

09:35 25 Q. Thank you. Oh, I'm sorry, could you refer to the first

1 paragraph and just review that quickly? You don't have to read
2 that. Is it fair to say that this is regarding Mr. Stuart's
3 2002 Amended Form 1040X?

4 A. It's referred to in the letter as 2002.

09:36 5 MR. BERNHOFT: One moment, please, Judge.

6 (Brief pause.)

7 BY MR. BERNHOFT:

8 Q. Ms. Morgan, handing you a copy of what's been marked as
9 Exhibit 1007. Could you tell me what that is, please.

09:36 10 A. This is the letter 2645(c) to James A. Stuart from the
11 Internal Revenue Service.

12 Q. Thank you.

13 Move admission of Exhibit 1007. Permission to
14 publish.

09:36 15 MR. JACOBS: I have no objection.

16 THE COURT: Is there any objection?

17 MR. JACOBS: No, Judge. I'm sorry, I have no
18 objection.

19 THE COURT: Received.

09:36 20 (Exhibit 1007 offered and received.)

21 MR. BERNHOFT: Thank you.

22 BY MR. BERNHOFT:

23 Q. And, Mrs. Morgan, can you tell me what the date on that
24 letter is, please.

09:37 25 A. The date is June 26th, 2006.

1 Q. And from Kansas City IRS to Mr. Stuart?

2 A. Correct.

3 Q. What tax period is that relating to?

4 A. December 31st, 2005.

09:37 5 Q. And could you read that highlighted text in that next
6 paragraph, please.

7 A. "We haven't resolved this matter because we haven't
8 completed all the research necessary for a complete response.
9 We will contact you again within 45 days to let you know what
09:37 10 actions we are taking. You don't need to respond (sic) any
11 further now on this matter."

12 Q. Thank you.

13 THE COURT: Please read that again. The last line.

14 THE WITNESS: "You don't need to do anything further
09:37 15 now on this matter."

16 BY MR. BERNHOFT:

17 Q. Thank you. Now, Ms. Morgan, handing you a copy of what's
18 been marked as 1008, could you tell me what that is, please?

19 A. This is a letter from James -- to James A. Stuart from the
09:38 20 Internal Revenue Service dated June 3rd -- July 3rd, 2006.

21 Q. Thank you.

22 Move admission 1008. Permission to publish.

23 MR. JACOBS: I have no objection, Judge.

24 THE COURT: It's received.

09:38 25 (Exhibit 1008 offered and received.)

1 MR. BERNHOFT: Thank you.

2 BY MR. BERNHOFT:

3 Q. And, Mrs. Morgan, could you tell me what tax period this
4 letter from IRS Kansas City to Mr. Stuart relates to?

09:38 5 A. December 31st, 2005.

6 Q. And just referring you -- and if you could read that
7 highlighted text starting the first paragraph "although,"
8 please.

9 A. "Although we try to respond quickly, extensive research is
09:39 10 often required. At this time we are unable to provide a
11 complete response because: Due to heavy workload, we have not
12 yet completed our research to resolve your" -- "due to heavy
13 workload, we have not yet completed our research to resolve your
14 inquiry."

09:39 15 Q. Now, Mrs. Morgan, I think you testified yesterday that the
16 IRS doesn't discuss tax law. Do you recall that testimony?

17 A. They don't argue the tax law, no. That's not their
18 responsibility.

19 Q. But they do legal research on tax issues, don't they?

09:39 20 A. I don't know what this area does when this letter was sent
21 out.

22 Q. Well, on the face of the letter it says that they need to
23 complete their research.

24 A. That doesn't necessarily require legal research to the law.

09:40 25 That's just their research.

1 Q. I see. Okay.

2 Now, Ms. Morgan, handing you a copy of what's been
3 marked as 1009, could you tell me what that is, please?

4 THE COURT: One second. If there are additional
09:40 5 exhibits you will be reviewing with this witness, and it's
6 fairly clear which exhibits you're going to be utilizing, please
7 hand them all up at this time.

8 MR. BERNHOFT: Yes. One moment, Judge.

9 (Brief pause.)

09:41 10 THE COURT: Mr. Hill does need his exercise but I
11 don't want him running back and forth. Thank you.

12 MR. BERNHOFT: Move admission 1009. Permission to
13 publish.

14 MR. JACOBS: I have no objection.

09:41 15 THE COURT: It's received.

16 (Exhibit 1009 offered and received.)

17 THE COURT: Proceed.

18 BY MR. BERNHOFT:

19 Q. And could you tell me what the date of that letter from
09:41 20 Mr. Stuart to Milwaukee IRS is, please? I can zoom that in a
21 bit. Be glad to.

22 A. Dated July 21st, 2006.

23 Q. And that's to Milwaukee IRS on Wisconsin Avenue there; is
24 that right?

09:41 25 A. That's correct.

1 Q. And could you read that highlighted text there in the first
2 paragraph for the jury, please.

3 A. "As we agreed, I will forward you via mail all the
4 information regarding this situation for your review. This
09:42 5 includes a 1040X and a Form 4852, as well as all relevant
6 additional communications."

7 Q. And that first sentence in that second paragraph, please?

8 A. "It is my belief that in filing the above stated
9 informational returns with the IRS, I have followed the law, and
09:42 10 the IRC, to the letter."

11 Q. Thank you. Ms. Morgan, handing you a copy of what's been
12 marked 27, could you review that and tell me what that document
13 is, please.

14 A. This is a letter from the Internal Revenue Service,
09:43 15 Milwaukee Appeals Office to James and Marjorie Stuart.

16 Q. Thank you.

17 Move admission of 27 and permission to publish.

18 MR. JACOBS: I think that was admitted.

19 MR. BERNHOFT: I'm sorry, it is admitted into evidence
09:43 20 already. Thank you.

21 BY MR. BERNHOFT:

22 Q. And publishing to the witness and the jury. The upper
23 left-hand corner, could you, you know, confirm again who this
24 letter is from to Mr. Stuart?

09:43 25 A. It's from the Internal Revenue Service, Milwaukee Appeals

1 Office.

2 Q. Okay. And can you tell me the date of this letter from IRS
3 Milwaukee Appeals to Mr. Stuart?

4 A. July 27th, 2006.

09:44 5 Q. And if I can have you read these first two short paragraphs
6 to the jury, please, starting with the side of my pen at the
7 paragraph?

8 A. Beginning with "our office"?

9 Q. Please.

09:44 10 A. "Our office has completed its review of your claim for
11 refund of taxes that we have charged you. Based on the
12 information you submitted, there is no basis to allow any part
13 of your claim."

14 Q. And that second paragraph, please?

09:44 15 A. "The income that you received in 2002 is clearly wages and
16 is taxable. The Appeals Office does not entertain any arguments
17 listed in your letters."

18 Q. Now, in reviewing this letter as a whole, Ms. Morgan, are
19 there any citations to any law or any Internal Revenue Code or
09:44 20 regulations in this IRS letter to Mr. Stuart?

21 A. No.

22 Q. Thank you.

23 One moment, please, Your Honor.

24 THE COURT: Certainly.

09:45 25 (Brief pause.)

1 BY MR. BERNHOFT:

2 Q. Mrs. Morgan, showing you a copy of what's been marked as 28.
3 Could you tell me what that is?

4 A. This is a letter to the Taxpayer Advocate Service from James
09:45 5 A. Stuart.

6 Q. Thank you.

7 Move admission of 28. Permission to publish.

8 MR. JACOBS: I have no objection.

9 THE COURT: It's received.

09:45 10 (Exhibit 28 offered and received.)

11 MR. BERNHOFT: Thank you.

12 BY MR. BERNHOFT:

13 Q. And, Mrs. Morgan, directing you to the upper left-hand
14 corner of that letter, what date is this letter from Taxpayer
09:46 15 Advocate in Milwaukee IRS to Mr. Stuart?

16 A. August 2nd, 2006.

17 MR. JACOBS: Pardon me. It's the other way around.

18 MR. BERNHOFT: Yes. Thank you very much.

19 BY MR. BERNHOFT:

09:46 20 Q. This is, in fact, a letter from Mr. Stuart to Mr. Kram. I'm
21 sorry. Can you confirm that from your review of the letter?

22 A. That's correct.

23 Q. Thank you. And if you would, please, Mrs. Morgan, directing
24 you to the first paragraph, can you read that first paragraph
09:46 25 for the jury, please.

1 A. "In your rely, you stated that the Taxpayer Advocate Service
2 does not have the authority to address any arguments or concerns
3 about the legality of the tax laws. I wish to state that I
4 understand this, and my concern is not with the legality of the
09:47 5 tax laws, but with (sic) the misrepresentation of these laws by
6 the IRS."

7 Q. Could you back up and just repeat that sentence and look
8 carefully starting with "but the"?

9 A. "But the misinterpretation of these laws by the IRS."

09:47 10 Q. And could you continue, please?

11 A. "In the response I received from the Appeals Office, the
12 statement was made that it was clear that I owe this tax. This
13 is where my disagreement arises, in that it is not clear that I
14 owe the tax, not that the tax system itself is illegal."

09:47 15 Q. Thank you. Mrs. Morgan, showing you a copy of what's been
16 marked 1012, could you tell me what that document is, please?

17 A. This is a letter 2644(c) to James Stuart from the Kansas
18 City Internal Revenue Service.

19 Q. Thank you.

09:48 20 Move the admission of 1012. Permission to publish.

21 MR. JACOBS: No objection.

22 THE COURT: Received.

23 (Exhibit 1012 offered and received.)

24 MR. BERNHOFT: Thank you.

09:48 25 BY MR. BERNHOFT:

1 Q. And, Mrs. Morgan, again, this is a letter from Kansas City
2 to Mr. Stuart?

3 A. Yes.

4 Q. And what is the date of that letter, please?

09:48 5 A. August 9, 2006.

6 Q. And referring your attention to that first highlighted
7 paragraph, could you read that for the jury, please.

8 A. "We previously sent you a letter concerning your inquiry
9 received May 23rd, 2006. Although we try to respond quickly,
09:48 10 extensive research is often required. At this time we are
11 unable to provide a complete response because: --"

12 Q. And could you just read that second indented paragraph,
13 please?

14 A. "Due to heavy workload, we have not yet completed our
09:49 15 research to resolve your inquiry."

16 Q. Thank you. Mrs. Morgan, handing you a copy of what's been
17 identified and marked as 29, could you review that, please, and
18 tell me what that document is.

19 A. This is a letter to Mr. Mark Everson from James A. Stuart.

09:49 20 Q. Could you tell me what -- that's all right. Thank you.

21 Move Exhibit 29. Permission to publish.

22 MR. JACOBS: No objection.

23 THE COURT: It's received.

24 (Exhibit 29 offered and received.)

09:50 25 MR. BERNHOFT: Thank you.

1 BY MR. BERNHOFT:

2 Q. And, Mrs. Morgan, referring your attention to the upper
3 left-hand corner, what is the date of this letter?

4 A. August 28, 2006.

09:50 5 Q. I'm going to try to zoom that in just a bit. And again, who
6 is this letter addressed to from Mr. Stuart?

7 A. Mr. Mark Everson.

8 Q. And who is Mr. Everson according to this letter?

9 A. Commissioner of the Internal Revenue Service.

09:51 10 Q. And, Mrs. Morgan, directing your attention, there appears to
11 be a handwritten note in the upper right-hand corner. I'm going
12 to just zoom in on that a little bit. Can you read that
13 handwritten note there starting with that first word which
14 appears to be a name?

09:51 15 A. I don't know for sure what the name is. It appears to be
16 "Sandy," or something to that. "Can you send this to Ogden
17 Frivolous Correspondence Unit?"

18 Q. All right, thank you. And, Mrs. Morgan, directing your
19 attention to the last paragraph with the circled yellow
09:52 20 highlight, could you read that for the jury, please.

21 A. "Now knowing what the IRC actually does say about who owes
22 the income tax, it is clear that such tax does not apply to me,
23 as my employer is not a trade or business within the meaning of
24 26 U.S.C. 7701(a)(26), but rather is a for profit company that
09:52 25 does no business at all with a governmental entity. As a worker

1 engaged in an agreement with a for profit company, said company
2 erroneously sent the IRS a W-2 implying that wages I received
3 were wages as defined in 3401(a) and 3121(a), when, in fact, I
4 did not receive such wages, and I did not, and have never in the
09:53 5 past 45 years, received wages that fall under these sections of
6 the IRC. With the above having been said, I have used all the
7 improper and legal means provided for in the IRC to recover the
8 monies I have sent to the IRS, said monies which were improperly
9 withheld from revenue I earned, and I demand that such monies be
09:53 10 returned to me immediately."

11 Q. And again, Mrs. Morgan, the acronym for IRC is Internal
12 Revenue Code?

13 A. That's correct.

14 Q. Thank you.

09:54 15 Mrs. Morgan, handing you a copy of what's been marked
16 1014, could you tell me what that document is, please.

17 A. This is a letter from the Internal Revenue Service to James

18 A. Stuart. The letter is a 2645(c).

19 Q. Thank you.

09:54 20 Move admission of 1014 and permission to publish.

21 MR. JACOBS: No objection.

22 THE COURT: Received.

23 (Exhibit 1014 offered and received.)

24 MR. BERNHOFT: Thank you.

09:54 25 BY MR. BERNHOFT:

1 Q. Mrs. Morgan, referring your attention to the upper
2 right-hand corner. Can you tell me what the date of that letter
3 is?

4 A. September 12th, 2006.

09:54 5 Q. And the highlighted section, what tax period does this
6 IRS/KC letter to Mr. Stuart refer to?

7 A. The period ending December 31st, 2005.

8 Q. And based on your knowledge of the documents and your
9 previous testimony, that would be the 2005 1040 return that
09:55 10 Mr. Stuart filed?

11 A. That's correct.

12 Q. And that was the 2005 1040 return that took the same
13 position as his amended X returns for '02, '03, '04?

14 A. Correct.

09:55 15 Q. And could you read just the highlighted section of that
16 first paragraph for the jury, please.

17 A. "We haven't resolved this matter because we haven't
18 completed all the research necessary for a complete response.
19 We will contact you again within 45 days to let you know what
09:55 20 action we are taking. You don't need to do anything further on
21 this matter."

22 Q. Thank you. Mrs. Morgan, handing you a copy of what's been
23 marked as 33, could you review that document and tell me what
24 that is, please?

09:56 25 A. This is entitled, A Notice of Demand From, according to the

1 letter, James A. Stuart. Don't see a date.

2 Q. Thank you.

3 Move admission of 33 and permission to publish.

4 MR. JACOBS: No objection.

09:56 5 THE COURT: It's received.

6 (Exhibit 33 offered and received.)

7 MR. BERNHOFT: Thank you.

8 BY MR. BERNHOFT:

9 Q. Mrs. Morgan, I'm first going to direct your attention to
09:56 10 page 2 of this notice of demand. Can you tell me what that date
11 is there?

12 A. October 6, 2006.

13 Q. So this correspondence to the IRS is dated October 6, 2006?

14 A. It's signed that date, yes.

09:57 15 Q. Thank you. Referring your attention back to page 1 of
16 Exhibit 33. And I'm going to zoom in for you. Would you read
17 that highlighted paragraph for the jury, please.

18 A. "As of the date of this correspondence, there has been no
19 meaningful resolution of this issue offered by the IRS. I have
09:57 20 received no valid reason why the IRS will not send me the
21 requested refund, and instead, all that has been sent is a form
22 letter saying the IRS needs another 45 days to research the
23 matter. I have received this form letter postponing any action
24 four times since filing my 1040. What I have not received from
09:58 25 the IRS is any form of evidence which is able to refute my sworn

1 testimony asserting the facts that I have stated above."

2 Q. Thank you. Ms. Morgan, directing your attention to what's
3 been marked Exhibit 36. Would you please take a look at that
4 document and tell me what that is.

09:58 5 A. This is a letter to Dennis Parizek dated April 10, 2007,
6 from James A. Stuart.

7 Q. I believe you testified yesterday that you knew who
8 Mr. Parizek was?

9 A. Yes, I worked for Mr. Parizek.

09:59 10 Q. And what is his position at Ogden?

11 A. He was the operation manager at the time.

12 Q. Is that the head official at IRS at Ogden?

13 A. No, he's in the examination function.

14 Q. Thank you.

09:59 15 Move admission of 36. Permission to publish.

16 MR. JACOBS: No objection.

17 THE COURT: Received.

18 (Exhibit 36 offered and received.)

19 MR. BERNHOFT: Thank you.

09:59 20 BY MR. BERNHOFT

21 Q. And, Ms. Morgan, just briefly I address your attention to
22 the upper left-hand corner. What is the date of that letter
23 from Mr. Stuart to Mr. Parizek at Ogden IRS?

24 A. April 10th, 2007.

09:59 25 Q. Thank you. And, Ms. Morgan, directing your attention to

1 that first highlighted couple of sentences there, could you
2 please read that to the jury?

3 A. "The IRS makes, as its basis in law, allegations that the
4 2002 return filed by the undersigned did not contain the
10:00 5 information the law requires, but it does not say what
6 information the law does require, which is allegedly missing.
7 The undersigned states that (sic) the IRS -- states to the IRS
8 that the Internal Revenue Code is much too complex for the
9 average individual to understand."

10:00 10 Q. And moving down to the last sentence of that paragraph
11 that's highlighted, would you please read that for the jury?

12 A. "The undersigned also states to the IRS that he is not to be
13 identified as a tax protester as he is not, and is more than
14 willing to pay any lawful income tax that he might owe."

10:01 15 Q. Thank you. And I'm going to direct your attention,
16 Ms. Morgan, to page 2 of this letter. And would you please read
17 starting from the first full sentence in the highlighted area at
18 the top there, line 1?

19 A. "In checking with the IRS Forms Office, the undersigned
10:01 20 can't find where an applicable tax form exists that applies to
21 him and has the proper OMB number, as the Form 1040 appears to
22 apply to a federal person, receiving a federal wage."

23 Q. Ms. Morgan, are you familiar with the acronym OMB?

24 A. I'm not totally, no.

10:01 25 Q. Could it be Office of Management and Budget?

1 A. It could be. I don't know.

2 Q. Well, does the IRS publish regulations regarding form
3 numbers pursuant to OMB rules and regulations?

4 A. I don't know.

10:02 5 Q. All right. Are you familiar with the Code of Federal
6 Regulations at 26 CFR in that regard?

7 A. No.

8 Q. Thank you. Ms. Morgan, lastly I want to direct your
9 attention briefly to page 3, what's been admitted as 36. And
10:02 10 could you read that first paragraph enumerated 10, please.

11 A. Beginning with "James A. Stuart"?

12 Q. Please, yes. Thank you.

13 A. "James A. Stuart, Jr. attests that he, in his capacity as
14 the living human being, does not, and is incapable of,
10:02 15 understanding the Internal Revenue Code, and after reading the
16 code, and not fully understanding its meaning, asks the IRS to
17 show him where in the code he may find his obligation to pay an
18 income tax."

19 Q. And, please, also paragraph 11?

10:03 20 A. "James A. Stuart, Jr. attests that he does not want to be in
21 violation of the law and requests that the IRS assist him in
22 pointing out and explaining that section of the code which
23 stipulates that he owes an income tax. He further states that
24 he will comply if the IRS will show him how he may lawfully do
10:03 25 so."

1 Q. Thank you.

2 Mrs. Morgan, showing you what's been -- a copy of
3 what's been marked as 0017.

4 MR. JACOBS: 10?

10:03 5 MR. BERNHOFT: I'm sorry, 1017.

6 BY MR. BERNHOFT:

7 Q. Could you tell me what that is, please.

8 A. This is the letter 3176 to James A. Stuart from the Internal
9 Revenue Service.

10:04 10 Q. Could you tell me what the date on that letter is?

11 A. June 8, 2007.

12 Q. Thank you. Now, Ms. Morgan, I can represent to you, and for
13 counsel's benefit, that this was moved in by the government.

14 It's the June 8, 2007 frivolity letter, government's 40. But
10:04 15 there was another page that was in this exhibit that the
16 government independently marked it. So I'll go briefly through
17 this, but you testified about this before I can represent to
18 you.

19 THE COURT: Is that a question or a statement?

10:05 20 MR. BERNHOFT: Sorry. I move admission of 1017.
21 Permission to publish.

22 MR. JACOBS: I have no objection.

23 THE COURT: It's received.

24 (Exhibit 1017 offered and received.)

10:05 25 MR. BERNHOFT: Thank you.

1 BY MR. BERNHOFT:

2 Q. And upon examining this first page, I believe you recall
3 that you did indeed testify about this yesterday, Ms. Morgan?

4 A. That's correct.

10:05 5 Q. And I wanted you to take a look at the first two or three
6 paragraphs there. And if you could read that highlighted text
7 to the jury, please, from this IRS letter to Mr. Stuart?

8 A. "We have determined that the information you sent is
9 frivolous and your position has no basis in law. Therefore, we
10:06 10 will not respond to future correspondence concerning these
11 issues. Our lack of response to further correspondence does not
12 in any way convey agreement or acceptance of the arguments
13 advanced. If you intend to persist in making such arguments we
14 encourage you to seek advice from a reputable tax practitioner
10:06 15 or attorney."

16 Q. All right. And then I'm going to refer you to page 4 of
17 what has been admitted as 1017. And if you could take a look at
18 that. Do you see that, Ms. Morgan?

19 A. Yes.

10:06 20 Q. And this was an attachment to page 4 to this IRS letter to
21 Mr. Stuart dated June 8, 2007. Are you familiar with the
22 Privacy Act?

23 A. Yes, somewhat.

24 Q. And are you familiar with the Privacy Act statement that IRS
10:06 25 will attach to some letters like this?

1 A. No. No. I've heard the term Privacy Act.

2 Q. All right. Could you please read that highlighted text for
3 me to the jury?

4 A. "They say that you must furnish us with records or" --

10:07 5 Q. Excuse me, I apologize. Could you start at the top there
6 which will give context, starting with "under"?

7 A. Okay.

8 Q. Thank you.

9 A. "Under the Privacy Act of 1974, we must tell you that our
10:07 10 legal right to ask for this information is Internal Revenue Code
11 Section 6001, 6011, 6012(a) and their regulations. They say
12 that you must furnish us with records or statements for any tax
13 for which you are liable, including the withholding of taxes by
14 your employer."

10:07 15 Q. Thank you.

16 Ms. Morgan, referring you to a copy of what's been
17 admitted as Exhibit Number 41, could you briefly tell us what
18 that is?

19 A. This is a letter dated June 22nd, 2007, to the Internal
10:08 20 Revenue Service in Ogden, Utah, and it is signed by James A.
21 Stuart, Jr.

22 Q. Thank you. I'm going to just briefly refer your attention
23 to the last page of this letter, page 5. And could you read
24 that brief highlighted text there for the jury, Ms. Morgan?

10:08 25 A. "If the IRS is able to satisfactorily provide answers to the

1 questions posed above, and can demonstrate where the Trust does
2 lawfully owe an income tax, and (sic) said tax" -- excuse me,
3 "said tax will be paid."

4 Q. Thank you. Ms. Morgan, and please refresh my recollection,
10:09 5 your history with IRS in Ogden, Utah, how long have you worked
6 in Ogden?

7 A. For 27 years.

8 Q. And what is your current position at Ogden?

9 A. I'm the court witness coordinator.

10:09 10 Q. Do you have knowledge of the Frivolous Correspondence Unit
11 at Ogden?

12 A. Yes.

13 Q. And do you know who is in charge of the Frivolous
14 Correspondence Unit?

10:09 15 A. As far as today, no.

16 Q. In your work experience at the Ogden campus, are you
17 familiar with a term called the "funny box"?

18 A. Yes.

19 Q. And could you tell the jury what the funny box is?

10:09 20 A. That's different returns or information that are pulled from
21 the system that may contain things that needed additional
22 review.

23 Q. Do you know why the Ogden campus called that the funny box?

24 A. I think someone just come up with a title just so that we'd
10:10 25 all know what they were talking about.

1 Q. Are you familiar with the term "classified trash"?

2 A. Yes.

3 Q. And what does the term "classified trash" mean?

4 A. That's information that's at the IRS that has information
10:10 5 that should not be disclosed -- for instance, Social Security
6 numbers, names and addresses. It's put in a trash that is
7 shredded and then burned.

8 Q. Thank you. Turning back to the funny box issue, is it
9 correct to say that certain revenue officers and IRS criminal
10:10 10 investigation division special agents will review documents that
11 are placed in the funny box up there in Ogden?

12 A. Yeah. It can be reviewed by any organization of the IRS,
13 yes.

14 Q. Isn't it true that there's a CI, at least one CI individual
10:10 15 special agent or team that does routinely review the funny box
16 correspondence?

17 A. CI?

18 Q. Criminal investigation.

19 A. Not a special agent, no.

10:11 20 Q. Are you familiar with Special Agent Mike Anderson from
21 Ogden?

22 A. No. I don't know him.

23 Q. Ms. Morgan, handing you a copy of what's been marked as 45.
24 Could you take a look at that document and tell me what that is,
10:11 25 please?

1 A. This is a letter dated July 25th, 2007, to the Internal
2 Revenue Service from James A. Stuart, Jr. taxpayer.

3 Q. Thank you.

4 Move admission of 45. Permission to publish.

10:12 5 MR. JACOBS: No objection.

6 THE COURT: It's received.

7 (Exhibit 45 offered and received.)

8 MR. BERNHOFT: Thank you.

9 BY MR. BERNHOFT:

10:12 10 Q. And, Ms. Morgan, what's the date of that letter?

11 A. July 25th, 2007.

12 Q. And directing your attention briefly to paragraphs 3, 4 and
13 5, and I'm going to -- is that clear for you?

14 A. Yes.

10:12 15 Q. Would you please read those highlighted sections for the
16 jury, please.

17 A. "After continued studying of the IRC, the Trustee believed
18 he had discovered the proper means to correct his previous
19 filings and proceeded correct the mistake -- and proceeded
10:12 20 correct the mistake by filing a Form 1040 accompanied by a
21 Form 4852, restarting (sic) the amount -- restating the amount
22 of wages believed to have been earned for that year.

23 "In making the above referenced filing, the Trustee
24 believed that he was acting responsibly on behalf of the Trust,
10:13 25 and was adhering to these provisions provided for in the IRC to

1 correct an error. The Trustee was so convinced he was acting
2 responsibly that he signed the corrected forms under penalties
3 of perjury.

4 "The James A. Stuart, Jr. Trust is not a tax
10:13 5 protester, and has, on numerous occasions, stated that he is
6 willing to pay any lawful income tax that is due, providing said
7 tax is understandable."

8 Q. Thank you.

9 Your Honor, moment to confer?

10:13 10 THE COURT: Certainly.

11 (Brief pause.)

12 MR. BERNHOFT: Thank you.

13 BY MR. BERNHOFT:

14 Q. We have one last document, Ms. Morgan. Ms. Morgan, handing
10:14 15 you what's been marked as Exhibit 47, could you take a look at
16 that and tell me what that document is, please.

17 A. This is a letter to the Internal Revenue Service from James
18 Stuart dated August 6, 2007, with some attachments.

19 Q. Thank you.

10:14 20 Move admission of 47. Permission to publish.

21 MR. JACOBS: No objection.

22 THE COURT: Received.

23 (Exhibit 47 offered and received.)

24 MR. BERNHOFT: Thank you.

10:15 25 BY MR. BERNHOFT:

1 Q. I'm going to ask you to just read a couple of the sections,
2 not all these highlighted sections, then I'm going to point my
3 pen to a couple of items if that's all right.

4 This paragraph 15 here, could you read that
10:15 5 highlighted sentence there, please?

6 A. "The Trustee, after studying the code, had proceeded to act
7 upon information that he had learned and believed to be correct,
8 and as a result, is now being punished by the IRS for doing so."

9 Q. And then below there, paragraph 17, Ms. Morgan -- I'm
10:15 10 sorry -- if you could read that for the jury, please.

11 A. "When the Trustee asked said tax professionals whether or
12 not a CPA is an agent of the IRS, said professional replied, in
13 front of a witness, that we take our marching orders from the
14 IRS, yes."

10:16 15 MR. BERNHOFT: Thank you. I have no further questions
16 on cross-examination for this witness, Your Honor.

17 MR. JACOBS: Judge, I do have some questions.

18 REDIRECT EXAMINATION

19 BY MR. JACOBS:

10:16 20 Q. Ms. Morgan, I wanted to review some of the correspondence
21 that Mr. Bernhoft showed you. And I know -- am I correct you
22 weren't reading the entire documents?

23 A. No, only parts of the documents.

24 Q. And if I could first draw your attention to -- I believe
10:17 25 Mr. Bernhoft showed you Exhibit 24.

1 And, Judge, I wonder if I could, as opposed to handing
2 her paper documents, rely on just the scanned images of those.

3 THE COURT: That's fine.

4 MR. JACOBS: I don't know if the court would be
10:17 5 willing to switch over to the -- I think it's currently on the
6 Elmo.

7 THE COURT: That's fine.

8 BY MR. JACOBS:

9 Q. This is Exhibit 24. Do you recognize what that is? Can you
10:17 10 see it from where you are there? I can probably make it a
11 little larger.

12 A. Yes.

13 Q. And what was that?

14 A. It's the March 9th, 2006 letter from Kansas City Appeals
10:18 15 Office to Mr. Stuart.

16 Q. Is that the other way around?

17 A. It is. It's to the IRS from Mr. Stuart.

18 Q. And can you read that last paragraph of Mr. Stuart's letter?

19 A. "With the above statute in mind, I hereby demand that I
10:18 20 either: receive my refund, receive a satisfactory explanation as
21 to why the refund is denied, or an answer to my letter
22 requesting an administrative appeal and request for cure. In my
23 (sic) opinion that the IRS is" --

24 THE COURT: Read that again, please.

10:18 25 THE WITNESS: "It is my opinion that the IRS is

1 skating on thin ice regarding this matter and appears to be
2 willfully denying my claim, which is an act with dire
3 repercussions."

4 BY MR. JACOBS:

10:19 5 Q. And then he showed you what was admitted as Exhibit 26.
6 Bear with me just one second.

7 MR. BERNHOFT: I'm sorry, Your Honor, I don't think 26
8 has been admitted.

9 THE COURT: It has not.

10:20 10 MR. JACOBS: Your Honor, based on the stipulation
11 entered into by the parties I would move into evidence
12 Exhibit 26.

13 MR. BERNHOFT: No objection, Judge.

14 THE COURT: It's received.

10:20 15 (Exhibit 26 offered and received.)

16 BY MR. JACOBS:

17 Q. You recognize what this document is, Ms. Morgan?

18 A. Yes.

19 Q. And what is it?

10:20 20 A. This is the letter dated June 28, 2006 to Ms. Dorothy Baylis
21 from James A. Stuart.

22 Q. And again, can you read that lower portion of the letter,
23 paragraph beginning with "therefore"?

24 A. "Therefore, there is nothing" --

10:21 25 Q. Oh, I'm sorry. I can tell I highlighted too -- beginning

1 with "along."

2 A. I'm sorry, I can't find that.

3 Q. The top line.

4 A. Oh, along. "Along with my 1040, I submitted both a 4852
10:21 5 refuting the W-2 sent to the IRS by my employer, and a revised
6 1099, both signed under penalty of perjury, in the form of an
7 affidavit, stating that my employer was wrong, and lied, was
8 fearful of the IRS retaliation, or misinformed about wages paid
9 me, as there were none. Therefore, there is nothing for you to
10:21 10 research, as justification for my actions are clearly spelled
11 out in the code. I therefore demand that the claimed refund
12 stated on my 1040 be returned to me immediately. This stalling
13 game is a ruse to discourage honest, law-abiding citizens who
14 are following the law to the letter and I will have no part of
10:22 15 it as I will not be discouraged. I consider this money in
16 effect stolen from me by my employer and I want it back."

17 Q. And then turning your attention to I believe Exhibit 29
18 which was shown to you by Mr. Bernhoft. This is a letter dated
19 August 28, 2006, addressed to Mr. Everson. I think you
10:22 20 identified him as the Commissioner of the Internal Revenue
21 Service?

22 A. That is correct.

23 Q. Can you read the first paragraph of Mr. Stuart's letter?

24 A. "I have recently discovered that the income tax, which I
10:23 25 have been dutifully paying for years, does not apply to me. In

1 reality, I have been deceived for all these years as I have been
2 duped into thinking that this tax was in fact owed. The
3 deception has been perpetrated upon me, and millions like me,
4 through the deceptive acts and actions of the IRS and it is time
10:23 5 that it stops, as more and more Americans are being educated as
6 to what constitutes the truth."

7 Q. I believe then you were also shown a notice and demand
8 submitted by Mr. Stuart, Exhibit 33. And I'd like to turn your
9 attention first to the -- just one second. This is the third
10:24 10 page of that document. Can you read what it says?

11 A. "Statement: I, James A. Stuart, Jr., swear that I am a
12 natural person residing in the city of Delafield, in Waukesha
13 County in our country of Wisconsin, expressly not within the
14 United States."

10:25 15 Q. And then the next page of that affidavit Mr. Stuart
16 submitted, can you read the second paragraph?

17 A. "Statement: I, James A. Stuart, Jr., swear that I am not in
18 receipt of, or have no knowledge of, evidence possessed by the
19 government demonstrating that I am a U.S. citizen, nor do I
10:25 20 reside in Washington, D.C., or any territories or possessions of
21 the United States."

22 Q. And I believe Mr. Bernhoft showed you Exhibit 36, a letter
23 from Mr. Stuart to Dennis Parizek dated April 10, 2007.

24 A. That's correct.

10:25 25 Q. And I'd like you to read a couple paragraphs. First let's

1 start with paragraph 3 of Mr. Stuart's letter. Can you read
2 that?

3 A. "The IRS persists in the act of addressing the entity, James
4 A. Stuart, Jr., as being a taxpayer and alleging that this
10:26 5 entity is also the same person as James A. Stuart, Jr. James A.
6 Stuart, Jr. is a taxpayer, but by his own personal knowledge,
7 James A. Stuart, Jr. asserts he is not, and he also asserts that
8 the two entities are not one and the same."

9 Q. And if we continue to -- I don't want to make you read the
10:26 10 entire document, but let's look at paragraph 5. Can you read
11 that?

12 A. "The undersigned, through his own independent study, attests
13 that the Trust's name is not the name of the natural man,
14 spelled with all capital letters. The Social Security
10:27 15 Administration does not own, or hold, the name of a natural man
16 and cannot give it to anyone or anything and the SSA cannot
17 change the spelling of a natural man's name. The English
18 language grammar rule requires that only the first letter of
19 proper nouns be capitalized. Said rule is recognized by
10:27 20 agencies within the United States Government corporation: The
21 United States Government printing office, style manual,
22 chapter 3. Capitalization, paragraph 3.2, proper names; and,
23 the United States Government correspondence manual, chapter 4,
24 forms and addresses, U.S. citizens, and chapter 5, the elements
10:28 25 of style, capitalization, proper nouns; and, the United States

1 Postal Service, domestic mail manual, issue 57, Section AO40,
2 alternate addressing formats, and the United States Postal
3 Service Publication 28, Postal Addressing Standards, Section 2,
4 Postal Addressing Standards, 212 format. The natural exception
10:28 5 to this rule is for entities whose name are defined in their
6 creation by their all capital letter spelling and the estates,
7 paragraph (sic), trusts, of dead people. Natural people's names
8 do not fit that exception and can only be spelled properly
9 according to rules of English language grammar which are
10:28 10 recognized."

11 Q. Okay. And then the paragraph below that, paragraph 6?
12 Well, let me try that again.

13 A. "James A. Stuart, Jr. attests that he is a living human
14 being who has loaned his consciousness to, and is acting in the
10:29 15 capacity of, the Office of Trustee of the James A. Stuart, Jr.
16 Social Security Trust."

17 Q. And then try paragraphs 7 and 8.

18 A. "James A. Stuart, Jr., through his own independent study,
19 attests that it is the James A. Stuart, Jr. Trust that has
10:29 20 received income, and not the natural man, James A. Stuart, Jr.

21 "James A. Stuart, Jr., through his own independent
22 study, attests that he is not, nor has he ever been, in the
23 possession of a Social Security number or a Social Security
24 card, therefore has no TIN, and that said instrument and TIN
10:30 25 belong to the James A. Stuart, Jr. Social Security Trust

1 account."

2 Q. And now that we see that, let me -- let's -- go to the first
3 page. What's the date of this letter?

4 A. April 10th, 2007.

10:30 5 Q. Let me move on. Next I believe you were shown Exhibit 41.
6 Do you recognize what Exhibit 41 is?

7 A. Yes.

8 Q. It's a letter from Mr. Stuart to the IRS dated June 22 of
9 2007?

10:31 10 A. That's correct.

11 Q. And if we could just -- let me, first of all, highlighting
12 this section, the first sentence, the "James A. Stuart, Jr.
13 Trust declines to complete the questionnaire;" do you know what
14 questionnaire is being referred to there?

10:31 15 A. No, I don't.

16 Q. Are there questionnaires that were sometimes sent out to the
17 taxpayers when they filed frivolous claims?

18 A. Yes. Yes.

19 Q. What type of questionnaires might be sent out?

10:31 20 A. They would be sending out questionnaires that might ask, you
21 know, where they received the information, it's an independent
22 study, is it from something off the Internet, if they have names
23 or asked to turn those over.

24 Q. All right. If you could read the paragraph that follows in
10:31 25 which -- in Mr. Stuart's letter.

1 A. "James A. Stuart, Jr., the living human being, who is not in
2 possession of a taxpayer identification number, TIN, or a Social
3 Security number, SSN, and who has loaned his consciousness and
4 physical capacity to, and acts in the capacity as, the Office of
10:32 5 Trustee for the James A. Stuart, Jr. Trust, and for the purpose
6 of this correspondence is now acting in said capacity, hereby
7 states the following."

8 Q. And if we move to that next paragraph, can you read that?

9 A. "James A. Stuart, Jr., after completing a great deal of
10:32 10 diligent research, has concluded that he, in his capacity as a
11 living human being and not in the possession of a Social
12 Security number, SSN, and as a citizen of one of the several
13 states in these United States of America, who has inalienable
14 rights guaranteed him under the Constitution of the United
10:33 15 States of America, now believes that he, as the man, does not
16 owe an income tax. Therefore, from this point forward, all
17 comments in this correspondence are being made by the Office of
18 Trustee, thereafter also referred to as Trustee, of the James
19 Arthur Stuart Jr., aka James A. Stuart Jr. Trust, said trust
10:33 20 being a Social Security numbered taxpayer."

21 Q. I don't want to make you read the entire letter, but let's
22 try the first sentence beginning at the top of the second page.
23 "The sovereign"?

24 A. "The sovereign human being, being a natural person, who has
10:33 25 loaned his consciousness and physical capacity to the Office of

1 Trustee of the Trust, wanting to duly execute his responsibility
2 and comply with the law, has made a concerted effort to find in
3 the IRC where a living human being owes an income tax, and
4 cannot find where such an obligation exists. This same
10:34 5 individual, acting in the same capacity, and after further
6 research, has discovered information that appears to indicate
7 that the taxpayer is in fact an entity with a name spelled much
8 like the name of the living human being who loaned his
9 consciousness and physical capacity to the Office of Trustee,
10:34 10 but instead, the name is spelled in all upper case letters. The
11 following is what the natural person believes to be the case
12 regarding the creation of this taxpayer."

13 MR. BERNHOFT: Your Honor, may we approach briefly?

14 THE COURT: Certainly.

10:35 15 (At side bar on the record.)

16 MR. BERNHOFT: Judge, I don't mind Mr. Jacobs getting
17 into this stuff, that's fine, that's part and parcel of the
18 correspondence chain, but, you know, he elected not to do this
19 on direct. I crossed pretty selectively, got my subject matters
10:35 20 and highlights in there. I mean, I think there is some natural
21 limit to redirect and I think we're kind of approaching that.

22 MR. JACOBS: Truthfully, Judge, like he says, he kind
23 of selectively pulled from the letters and I don't think that
24 gave an accurate representation of what the correspondence was.
10:36 25 So it forced us to go back and say --

1 THE COURT: To the extent he's expressing objection
2 it's overruled. Proceed.

3 MR. BERNHOFT: Thank you.

4 (End of discussion at side bar.)

10:36 5 MR. JACOBS: Give me just one second, Your Honor.

6 (Brief pause.)

7 BY MR. JACOBS:

8 Q. I'd like to show you what's been marked for identification
9 as Exhibit 52.

10:37 10 (Witness peruses document.)

11 BY MR. JACOBS:

12 Q. Do you recognize what that exhibit is?

13 A. Yes.

14 Q. And is it correct that that's a letter from Mr. Stuart to
10:37 15 the IRS?

16 A. Yes, it is.

17 MR. JACOBS: Your Honor, I'd move into evidence
18 Exhibit 52.

19 MR. BERNHOFT: Moment to confer with counsel?

10:37 20 (Brief pause.)

21 MR. BERNHOFT: No objection.

22 THE COURT: 52 is received.

23 (Exhibit 52 offered and received.)

24 BY MR. JACOBS:

10:38 25 Q. And what's the date of the letter, Ms. Morgan?

1 A. December 3rd, 2007.

2 Q. And to whom is it addressed?

3 A. It's addressed to Jon Schwartz.

4 Q. And do you know who Mr. Schwartz is?

10:38 5 A. I do not, no.

6 Q. Someone with the IRS, I gather.

7 A. Someone with the IRS, yes.

8 Q. Let me start with the first paragraph, number 1. Can you
9 read that to the jury?

10:38 10 A. "The Trust is fully aware of the nature of the statutes
11 created by the United States Government, a corporation,
12 hereafter referred to as USG, and now these statutes have been
13 used since the bankruptcy of the United States was declared in
14 1938."

10:39 15 Q. And if I could turn to the fourth page of that exhibit,
16 paragraph 21. Could you read that?

17 A. "The Trust believes that at that time it was decided by the
18 bankers, and USG, not to inform the people of the United States
19 of America of the bankruptcy. It was not made known to them the
10:39 20 fact that under bankruptcy, they had purportedly lost all of
21 their constitutional rights and were now under the jurisdiction
22 of compelled performance to repay the debt to the bankers. If
23 the people knew this, they would become alarmed and demand an
24 accounting. It was also decided to tell the people that, for
10:39 25 the sake of convenience and simplicity, the USG and the American

1 B.A.R., were going to blend the procedures of law with the
2 procedures of equity, and because this sounded legal and lawful,
3 the people bought it hook, line, and sinker, and the UCC was
4 subsequently created. The USG then created its foreign
10:40 5 international courts in admiralty jurisdiction, and unbeknown to
6 the people, and all laws Congress has passed since this time
7 have been public policy statutes, and not public laws, as the
8 corporate Congress is not capable of passing public laws that is
9 not in the interest of its creditor. Said public policy is in
10:40 10 the interest of our creditors, and not in the interest of the
11 people, who purportedly no longer have any constitutional rights
12 under bankruptcy."

13 Q. Let me just show you one more -- what's been marked for
14 identification as Exhibit 51, and stipulated to as being
10:41 15 admissible. Exhibit 51.

16 And I would move into evidence Exhibit 51, Your Honor.

17 MR. BERNHOFT: No objection.

18 THE COURT: Received.

19 (Exhibit 51 offered and received.)

10:41 20 BY MR. JACOBS:

21 Q. Can you tell the jury what is Exhibit 51?

22 A. This is a letter to the Internal Revenue Service regarding
23 James A. Stuart dated September 26, 2007. It is actually signed
24 by James A. Stuart, Jr., Trustee.

10:41 25 Q. I gather -- how many pages is the letter?

1 A. The letter is five pages, and then there is some
2 attachments.

3 Q. And I think you looked at this signature block at the end;
4 is that right?

10:42 5 A. Correct.

6 MR. JACOBS: If I could just have a moment, Judge.

7 (Brief pause.)

8 BY MR. JACOBS:

9 Q. I need to back up just one second to Exhibit 36. I believe
10:42 10 you were shown this on cross-examination. The signature block
11 on page 36, just showing you, do you see the signature block?

12 A. Yes.

13 Q. And can you read that?

14 A. "James A. Stuart, Jr. in care of non-domestic, 2410
10:43 15 Hirschman Lane, near: Hartland, Wisconsin, 53029, United States
16 of America, expressly not the United States, without prejudice
17 to, and reserving all of my inalienable rights."

18 Q. And then if I could return to Exhibit 51. Do you have that
19 in front of you?

10:43 20 A. Yes, I do.

21 Q. Could you read the first two sentences of the second
22 paragraph of that letter?

23 A. "The living human being, James A. Stuart, Jr., Steward, who
24 has loaned his consciousness and physical capacity to, and acts
10:44 25 within the capacity as Office of Trustee, hereafter referred to

1 as Trustee, of the James A. Stuart, Jr. and the Code of Federal
2 Regulations, CFR, and the Social Security Act in more detail and
3 has made some interesting discoveries. The Trustee has also
4 been reading in various independent publications, as well as a
10:44 5 publication circulated by the Social Security Administration,
6 SSA, itself, that the Social Security fund is in serious
7 jeopardy, and unless taxes are increased, or another remedy is
8 found, the fund will become insolvent within the next 20 years
9 or so."

10:45 10 Q. And then if you would turn to the second page of the letter.
11 Let's try the first -- excuse me. Third page.

12 A. Third paragraph?

13 Q. The third page.

14 A. Oh, the third page. Whoop. That was the second page, we're
10:45 15 good. Thank you.

16 Q. Could you read just the first two paragraphs?

17 A. "No living human being has ever been issued an SSN and most
18 certainly is not numbered.

19 "5: The human being who has loaned his consciousness
10:45 20 and physical capacity to, and acts within the Office of Trustee
21 for James A. Stuart, Jr. Trust has no SSN."

22 Q. And then just one slightly longer piece of reading.
23 Paragraph 8 of Mr. Stuart's letter?

24 A. "A further maxim of law is; as the IRS is an agent of the
10:46 25 U.S. Treasury which is the maker/issuer of the notes that the

1 Trust has received from said banks, and that these notes were
2 used to discharge, not pay, the debt of the banks to the Trust,
3 the IRS then is equally, jointly, collectively, and severely
4 liable for payment, not discharge of, the face value of the
10:46 5 note. Because the IRS owned the debt prior to the Trust
6 receiving the debt instrument, the IRS must first pay real money
7 to the Trust, as a ratio of 21.95 Federal Reserve notes to every
8 1 silver dollar, before the Trust can pay any tax on income
9 purportedly earned, because until this event occurs, no income
10:47 10 has been received."

11 MR. JACOBS: Judge, that's the extent of my redirect.

12 THE COURT: Rebuttal?

13 MR. BERNHOFT: No recross.

14 THE COURT: You may step down. Please do not discuss
10:47 15 your testimony with anyone unless you're advised this case has
16 been concluded. Have a good day.

17 (Witness excused at 10:47 a.m.)

18 MR. JACOBS: Should I call my next witness, Judge? We
19 would next call David Schwarz.

10:48 20 Mr. Schwarz, if you would come forward. Remain
21 standing.

22 THE REPORTER: Raise your right hand, please.

23 DAVID SCHWARZ, GOVERNMENT WITNESS, SWORN

24 THE REPORTER: Please state your name and spell your
25 name for the record.

1 THE WITNESS: David L. Schwarz, S C H W A R Z.

2 DIRECT EXAMINATION

3 BY MR. JACOBS:

4 Q. Good morning, Mr. Schwarz, how are you?

10:49 5 A. Good.

6 Q. Sir, can you tell me, where do you currently reside?

7 A. Slinger, Wisconsin.

8 Q. How long have you lived in Slinger?

9 A. 23 years.

10:49 10 Q. And how are you currently employed?

11 A. I'm currently employed as controller of Services Plus in
12 Green Bay.

13 Q. What type of company is that?

14 A. It's a co-packaging/co-manufacturing company, primarily in
10:49 15 the tissue industry.

16 Q. Tell me what your educational background is.

17 A. Four-year double major in accounting and mathematics from
18 St. Norbert College in De Pere, Wisconsin. And I have a CPA as
19 well.

10:49 20 Q. Are you familiar with a company called Payroll Data
21 Services?

22 A. Yes. I was employed there.

23 Q. During what period of time were you employed there?

24 A. January of 2007 to about September 2007.

10:50 25 Q. What type of business is Payroll Data Services?

1 A. It's a payroll processing company, very similar to the
2 bigger well-known companies like ADN and Ceridian and so forth.

3 Q. Can you describe, how big is it, how many clients it had
4 while you were there?

10:50 5 A. It had about 800 clients, primarily in the state of
6 Wisconsin.

7 Q. And what was your position there?

8 A. My position was chief operating officer and chief financial
9 officer.

10:50 10 Q. And are you familiar with a business called New Age
11 Chemical?

12 A. Yes, I am.

13 Q. How are you familiar with that business?

14 A. They were a client of Payroll Data Services.

10:50 15 Q. And do you recall what type of services Payroll Data
16 Services provided to New Age Chemical?

17 A. The typical payroll processing, standard, you know, type
18 thing.

19 Q. And what does that involve? I mean, what does Payroll Data
10:51 20 Services do?

21 A. Okay. Well, they process the payrolls on a weekly or
22 semi-weekly and monthly type system. And then also provide tax
23 filings and so forth as well.

24 Q. What type of tax filings?

10:51 25 A. It can be, you know, weekly type filings as well as

1 quarterly filings. And then, also, W-2s at the end of the year,
2 1099s, that type stuff.

3 Q. And what is it that Payroll Data Services files? Is there
4 particular forms or --

10:51 5 A. There's various different forms. Well, the W-2s at the end
6 of the year, along with the summary filings and so forth that go
7 with that. 1099s were issued as well. And then, also,
8 quarterly unemployment tax filings as well as filings of income
9 tax withholdings and so forth from the various companies that we
10:51 10 process payrolls for.

11 Q. And do you recall having any specific dealings with that
12 company New Age Chemical?

13 A. Yes, I do.

14 Q. And was there anyone in particular that you had dealings
10:52 15 with at New Age Chemical?

16 A. James Stuart.

17 Q. Do you know what his relationship to New Age Chemical was?

18 A. I believe he was the owner.

19 Q. And is that typical for you to have contact with clients as
10:52 20 part of your job at Payroll Data Services?

21 A. At the level that I was at, not on a day-to-day basis. It
22 was more if there was a problem or a concern.

23 Q. And do you recall generally what dealings you had with
24 Mr. Stuart?

10:52 25 A. We had discussions. He was talking to Jane McCartan, one of

1 our processing people, customer service types, about not wanting
2 certain information relayed to the governments, W-2s, that type
3 of thing, and it ultimately got up to me.

4 Q. Did you have occasion to ever meet Mr. Stuart?

10:53 5 A. Yes, I did. We met in our offices sometime in I wanna say
6 March to May timeframe of 2007.

7 Q. Do you think you'd recognize him today if you saw him?

8 A. Yes.

9 Q. Do you see him here today?

10:53 10 A. Yes. He's in that seat in the middle there.

11 Q. I'm sorry, just so it's clear, could you identify where he's
12 seated, what he's wearing?

13 A. I believe he's right in the middle with the blue tie. It's
14 been a few years, though, I'm not sure.

10:53 15 Q. He might appreciate that, but on how many occasions have you
16 met him?

17 A. Just once.

18 Q. And that would have been more than four years ago?

19 A. Yes.

10:53 20 Q. Did you have any other communications with him other than in
21 person?

22 A. Yeah, there were a few phone conversations as well.

23 Q. Did you have any written communications with him?

24 A. Yes. I did have one piece of correspondence that I wrote to
10:54 25 him after he had written correspondence to Jane in our company,

1 as well as one that I received from him.

2 Q. I'd like to show you what's been marked for identification
3 as Exhibit 152. If you would look through that.

4 (Witness peruses document.)

10:55 5 A. All right.

6 BY MR. JACOBS:

7 Q. Mr. Schwarz, do you recognize what that is?

8 A. Yes. This is the correspondence back and forth between
9 Payroll Data Services and James Stuart.

10:55 10 MR. JACOBS: Your Honor, I'd move into evidence
11 Exhibit 152.

12 THE COURT: Is there any objection?

13 MR. BERNHOFT: None.

14 THE COURT: It's received.

10:55 15 (Exhibit 152 offered and received.)

16 BY MR. JACOBS:

17 Q. And can you tell me how many -- approximately how many
18 letters are there, can you tell?

19 A. Let's see. There's one, two, three, four -- six -- seven
10:55 20 letters.

21 Q. Okay. And can you tell, are they in chronological order?

22 A. Yes.

23 Q. And what's the first letter? What's the date of the first
24 letter?

10:55 25 A. March 26th.

1 Q. Okay. And who is that -- who wrote the letter and to whom
2 is the letter addressed?

3 A. James Stuart wrote the letter and it is to Jane McCartan.

4 Q. And is this the woman whose name you couldn't spell before?

10:56 5 A. Yes.

6 Q. Can you spell it?

7 A. It's M C, capital C A R T A N.

8 Q. And who was Ms. McCartan at that time?

9 A. I'm not sure of her title but it was primarily customer
10:56 10 service, day-to-day contact.

11 Q. And do you know, was she the customer service contact for
12 New Age Chemical?

13 A. She might have been the supervisor of the person doing the
14 day-to-day.

10:56 15 Q. And do you recall this letter?

16 A. Yes.

17 Q. And summarize for the jury, what's the substance of the
18 letter?

19 A. Well, the substance was in relation to a 1099 filing for the
10:56 20 year 2006. It's been awhile since I've read through this but --
21 primarily it was that and I'm not sure if he references the W-2s
22 in there. Yes, he does. He didn't want the filing of W-2s and
23 the W-3 summary form filed either.

24 Q. Who is "he"?

10:56 25 A. James Stuart.

1 Q. Now, was that a service that you were providing for New Age
2 Chemical?

3 A. Yes, it was.

4 Q. Was it significant to Payroll Data Services that Mr. Stuart
10:57 5 didn't want you to file them?

6 A. Yes, because the way we process the payrolls and so forth
7 it's all electronic. It's done in summary form along with other
8 employers when you do the tax filings.

9 Q. Now, that letter is -- is that two pages long for
10:57 10 Mr. Stuart?

11 A. Yes.

12 Q. And again, I gather there was additional correspondence. Do
13 you have the next letter in front of you dated April 13, 2007?

14 A. Yes.

10:57 15 Q. And who wrote that letter?

16 A. James Stuart again.

17 Q. And to whom is it addressed?

18 A. To Dave Jensen.

19 Q. And who is Mr. Jensen?

10:57 20 A. He was the owner of Payroll Data Services.

21 Q. And do you know what the substance of this letter is?

22 A. Generally the same thing for the year 2006, as far as
23 payment made to him, I believe. And then also the filing of the
24 W-2s.

10:58 25 Q. And when you say the filing of the W-2s, what's the issue

1 with the W-2s?

2 A. Generally he did not want them reported to the government
3 agencies because he wanted to file them himself in a different
4 summary format.

10:58 5 Q. And is that typical?

6 A. No. No, it's not.

7 Q. And again, when you say "he" you mean Mr. Stuart.

8 A. Yes.

9 Q. The next letter, April 16, 2007, who wrote that letter?

10:58 10 A. That was James Stuart again, and to myself.

11 Q. And can you tell the jury what's the substance of this
12 letter?

13 A. Pretty much along the same lines, the filing of the W-2s and
14 the W-3. And the fact that he didn't want -- he wanted those
10:59 15 reversed.

16 Q. And what do you mean by "reversed"?

17 A. He wanted us to correct them and basically have it not be
18 filed at all, the 1099.

19 Q. 1099?

10:59 20 A. There was a 1099 I believe for a payment made to him that he
21 thought was not compensation.

22 Q. And is that something that Payroll Data Services would
23 typically do for a client?

24 A. Yes.

10:59 25 Q. Okay. And did you agree to reverse the 1099?

1 A. Ultimately, yes, we did, in May.

2 Q. Now, you've used a couple terms that maybe most people are
3 familiar with but, for the record, what's a W-2?

4 A. W-2 is a statement of earnings given to an employee.

10:59 5 Q. And how is that different from a 1099? What's a 1099?

6 A. A 1099 is more of a tax filing for dividends, miscellaneous
7 income, other forms of compensation.

8 Q. And could you explain the difference between a W-2 and a
9 1099?

11:00 10 A. A W-2 is primarily given to direct employees of a company,
11 where a 1099 is given to other parties that are not necessarily
12 employees.

13 Q. And during the time you were at Payroll Data Services did
14 you issue W-2s and 1099s for New Age Chemical?

11:00 15 A. Yes, we did.

16 Q. Do you know, did you issue both W-2s and 1099s for
17 Mr. Stuart?

18 A. Yes.

19 Q. Did there come a time when that changed?

11:00 20 A. I think -- I mean, we obviously reversed the one, but I
21 don't know about other happenings after I left employment there.

22 Q. Were there any other individuals you were issuing W-2s for
23 with respect to New Age Chemical?

24 A. Yes, the remainder of the employees of New Age Chemical.

11:01 25 The people that we processed on our payroll.

1 Q. And do you recall right now approximately how many people
2 that was?

3 A. I do not recall, no.

4 Q. Turning your attention to the next letter that's dated April
5 25 of 2007.

6 A. Uh-huh.

7 Q. Do you recognize this letter?

8 A. Yes, I do.

9 Q. Who wrote it?

10 A. James Stuart.

11 Q. And to whom is it addressed?

12 A. To me.

13 Q. And could you describe for the jury, what's the substance of
14 this letter?

15 A. Pretty much the same thing, saying that we should reverse
16 the 1099 that was issued for 2006, as well as the W-2s, the fact
17 that he didn't want those filed.

18 Q. Now, in the middle of the letter there is -- there's a
19 sentence here that says:

20 "Should it become necessary to bring any legal action
21 forward regarding this matter, the under signed reserves the
22 right to bring said action in an Article III common-law court,
23 i.e., District Court of the United States, where he is entitled
24 to a trial by jury, as an equity court, which is only able to
25 recognize corporate entities, is not capable of, nor does it

1 have jurisdiction over a matter such as this."

2 Do you know what that's about?

11:02

3 A. We never talked about that specifically. I mean, I took it
4 more as a threat towards Payroll Data Services, to be honest
5 with you.

6 Q. And then in the bottom here, the last paragraph, it tells
7 you -- well, let me try that again.

8 "It is certainly most desirable that this matter" --

11:02

9 MR. BERNHOFT: Your Honor, objection. Counsel can ask
10 the witness to refer to relevant sections of the letter,
11 et cetera.

12 THE COURT: Objection sustained.

13 BY MR. JACOBS:

14 Q. Can you read this section of the letter?

11:02

15 A. Sure. "It is certainly most desirable that this matter can
16 be settled by the simple correction of the Form 1099 addressed
17 to the natural person James A. Stuart, Jr., who most certainly
18 did not receive the compensation stated, and most certainly is
19 not to be confused with, nor is, the federal person known as
20 James A. Stuart, Jr. which instead is a corporate entity, as
21 well as a Social Security Trust."

11:03

22 Q. Do you know what Mr. Stuart is referring to there?

23 A. We talked about that in person at our offices. He
24 basically -- in layman's terms, because I'm not a, you know,
25 expert on this matter certainly -- but he was basically saying

11:03

1 the Constitution does not allow the IRS to tax him as a person
2 versus an entity or vice-versa. I can't really recall which.

3 Q. So did Payroll Data Services, or you on behalf of Payroll
4 Data Services, agree to take any action based on Mr. Stuart's
5 request?

6 A. Ultimately we did. In May, as you can see from my letter,
7 based upon his statements saying that the payment on the 1099
8 for 2006 was not compensation, we took him at his word then at
9 that point and reversed the 1099.

10 Q. Did Mr. Stuart tell you -- did he tell you what the payments
11 to him were from New Age Chemical?

12 A. Yes. He said it was return --

13 MR. BERNHOFT: Objection, hearsay.

14 THE COURT: One second. What's the objection?

15 MR. BERNHOFT: Hearsay.

16 THE COURT: Overruled.

17 BY MR. JACOBS:

18 Q. Did Mr. Stuart tell you what the payments were?

19 A. He said it was non-employee compensation or a return of
20 capital.

21 Q. And why would that be significant to Payroll Data Services?

22 A. Well, if it's a bonus it would certainly go onto a 1099 or
23 some form of, you know, W-2 or something like that and be
24 reported to the federal government and to the state agencies as
25 well. Whereas if it's return of capital, you know, that's a

1 corporate matter.

2 Q. Do you report those payments to the federal government?

3 A. Typically we don't even process those.

4 Q. Had Payroll Data Services processed the payments that it was
11:05 5 reporting on the 1099?

6 A. I do not recall. That was before I was there.

7 Q. I see. Is there a way they would have gotten onto a
8 Form 1099 if you hadn't processed them?

9 A. No.

10 Q. And then, the next letter I think I have here is May 9th of
11:05 11 2007. Do you recognize this letter?

12 A. Yes, I do.

13 Q. I didn't go backwards, did I? And who wrote it and to whom
14 is it written?

11:06 15 A. It's from James Stuart again to myself.

16 Q. Again, I'm gonna just highlight the first --

17 A. I'm sorry?

18 Q. Can you read that first paragraph?

19 A. Sure. "Dear Dave, as a result of our conversation of
11:06 20 yesterday, I am writing you concerning a certain monetary amount
21 Payroll Data Services, LLC has, without authorization, reported
22 to the IRS as non-employee compensation, said amount allegedly
23 having been paid by an entity, in possession of an EIN, to James
24 Stuart, Jr. whom Payroll Data Services, LLC has alleged is in
11:06 25 possession a Social Security number. James Stuart, Jr. hereby

1 states that he has recently learned that he, the man, does not
2 possess a Social Security number, and that instead it is the
3 legal fiction, James Arthur Stuart, Jr. that, in fact, is in
4 possession of said number, and that it is this entity that has
11:07 5 been employed up until January 1st, 2006, by the aforementioned
6 entity with the EIN.

7 "After recognition of this fact, James Stuart, Jr. has
8 directed the company for whom he works that if he wished to
9 continue to retain his services, it must hereafter recognize
11:07 10 works that if it wished to (sic)" -- I'm sorry -- "recognize
11 that it has hired him the living human being, and not James
12 Arthur Stuart Jr., the legal fiction, and that James Stuart,
13 Jr., the man, is not the entity possessing a Social Security
14 number and as such is not to be designated as a taxpayer. As
11:07 15 evidenced by the Form 1099 issued to James Stuart, Jr. by
16 Payroll Data Services, LLC, it is making a statement that the
17 man is in possession of a Social Security number."

18 I apologize. There's glare on here.

19 Q. I think maybe I gave you a paper copy. I'm sorry. Never
11:08 20 mind.

21 Do you know, did you discuss this with Mr. Stuart?

22 A. I'm not sure if it was before or after that. I think our
23 conversation was actually before that timeframe.

24 Q. The next letter is dated May 14, 2007, do you recognize
11:08 25 this?

1 A. Yes, I do.

2 Q. And who wrote the letter and to whom is it written?

3 A. It was written by myself to James Stuart the president of
4 New Age Chemical.

11:08 5 Q. Can you describe the substance of your letter?

6 A. Yes. It was saying that we voided the 1099 filing and that
7 was paid through our payroll service for 2006, based upon the
8 fact that he indicated it was not compensation but a return of
9 capital or some other non-compensable payment. Relying on
10 verbal conversations that we have had at our offices and also on
11 the phone.

12 It also indicates that the W-2s that we did plan and
13 continue to process those, and basically if he wanted those to
14 not be processed he should find another payroll service to do so
11:09 15 and terminate our services.

16 Q. What does that mean? What are you telling Mr. Stuart in
17 that second paragraph?

18 A. In the second paragraph I'm basically saying that we're not
19 gonna change our process. We feel W-2s should be reported to
11:09 20 the government agencies as required by law, and that we're not
21 going to try to segregate his out and just print them on paper
22 and send them to him like he wanted us to.

23 Q. Do you know, did you ever hear back from Mr. Stuart in
24 response to your letter?

11:09 25 A. Yes. It's on the next letter, May 16th.

1 Q. And what is the substance of Mr. Stuart's letter back to
2 you?

3 A. Basically thanking us for reversing the 1099 filing, denying
4 that it was a return of capital, and that he agreed that he has
11:10 5 no problem with the transactions -- the W-2s still being
6 processed.

7 Q. Did you have any further contact with Mr. Stuart after that?

8 A. No, I did not.

9 Q. And I gather that would have been the last time you would
11:10 10 have talked to him or seen him?

11 A. Yes.

12 MR. JACOBS: That's all I have, Judge.

13 THE COURT: Cross?

14 MR. BERNHOFT: Your Honor, I have a request for a
11:10 15 short bathroom break, is that possible?

16 THE COURT: We'll take a break.

17 THE BAILIFF: All rise.

18 (Jury out at 11:10 a.m.)

19 THE COURT: Short break.

11:11 20 (Recess taken at 11:11 a.m., until 11:27 a.m.)

21 (Jury in at 11:27 a.m.)

22 THE COURT: You may proceed.

23 MR. BERNHOFT: Your Honor, I have no questions for
24 this witness.

11:28 25 THE COURT: You may step down. Please do not discuss

1 your testimony with anyone unless you're advised this case has
2 been completed. Have a good afternoon. Stay warm.

3 (Witness excused at 11:28 a.m.)

4 MR. JACOBS: Your Honor, for our next witness the
11:28 5 United States would call Beverly Schlipp.

6 Ms. Schlipp, if you would come forward. I'll just
7 take several objects off the witness stand.

8 THE REPORTER: Raise your right hand, please.

9 BEVERLY SCHLIPP, GOVERNMENT WITNESS, SWORN

10 THE REPORTER: Please state your name and spell your
11 name for the record.

12 THE WITNESS: Beverly Schlipp, S C H L I P P.

13 DIRECT EXAMINATION

14 BY MR. JACOBS:

11:29 15 Q. Good afternoon, Ms. Schlipp. Or maybe it's still morning.
16 Good morning, Ms. Schlipp. Can you tell me, where do you
17 currently live?

18 A. I live on Wilton Road in Eagle, Wisconsin.

19 Q. And how long have you lived there?

11:29 20 A. About 16 years.

21 Q. Can you tell me, how far did you go in school?

22 A. Four years of college but never graduated.

23 Q. What were you studying?

24 A. Physical education.

11:29 25 Q. And are you married?

1 A. I certainly am.

2 Q. How long have you been married?

3 A. 16 years.

4 Q. And do you have any children?

11:29 5 A. I've got two of my own and two stepchildren.

6 Q. And how old are your own children?

7 A. 33 and 35.

8 Q. And what are their names?

9 A. My son's name is Brian Reese, and my daughter's name is

11:30 10 Allison Reese. She just got married but she's Allison Reese.

11 Q. And do you know what your daughter does for a living?

12 A. She is an accountant.

13 Q. And where does she currently live?

14 A. She lives in Falls Church, Virginia.

11:30 15 Q. Ms. Schlipp, are you currently employed?

16 A. I'm retired.

17 Q. And when did you retire?

18 A. March of 2010.

19 Q. At the time you retired where were you working?

11:30 20 A. I was working at New Age Chemical.

21 Q. Do you know an individual named James Stuart?

22 A. Yes, I do.

23 Q. How do you know Mr. Stuart?

24 A. He's my brother.

11:30 25 Q. Do you see him here today?

1 A. Yes, I do.

2 Q. Could you just identify him by where he's seated, what he's
3 wearing?

11:31 4 A. Sure. He's sitting back there with a blue suit and a tie
5 on. The second table.

6 Q. Far left-hand side?

7 A. Yes.

8 Q. Not the guy in the middle.

9 A. No. Sorry.

11:31 10 Q. That's all right. And he's your older brother?

11 A. Yes, he is.

12 Q. Not much older.

13 THE COURT: One second, please. Please approach.

14 (At side bar on the record.)

11:31 15 (Discussion off the record.)

16 THE COURT: I note that Mr. Schwarz is in the
17 courtroom, the parties have been advised, and neither party has
18 any objection to him remaining.

19 (End of discussion at side bar.)

11:32 20 MR. JACOBS: Your Honor, I would ask the record
21 reflect that the witness has identified the defendant James
22 Stuart.

23 THE COURT: Noted.

24 BY MR. JACOBS:

11:32 25 Q. Now, I believe you indicated you retired in March of 2010,

1 and at that time you were working at New Age Chemical. Tell the
2 jury, what type of business is New Age Chemical?

3 A. It's a manufacturer of metal working fluids which would be
4 like for machine shops and things like that.

11:32 5 Q. And where is it located?

6 A. It's located in Kettle Court in Delafield, Wisconsin.

7 Q. K E T T L E?

8 A. Yes.

9 Q. And then Court?

11:33 10 A. Court.

11 Q. How long has it been at that location?

12 A. Approximately 12 years.

13 Q. How long has the business itself been in existence?

14 A. It was formed in 1985.

11:33 15 Q. Where was it prior to moving to Delafield?

16 A. Prior to that it was in -- on Pearl Street in Waukesha,
17 Wisconsin.

18 Q. And when you were last working there how many employees
19 worked at New Age Chemical?

11:33 20 A. Approximately eight.

21 Q. And how long had you worked there when you retired in March
22 of 2010?

23 A. I started around 1987. 20-some years.

24 Q. And what was your position when you retired?

11:33 25 A. When I retired I was a vice-president.

1 Q. What were your responsibilities at that time?

2 A. I did everything from postings for accounts payables, I
3 wrote checks for the accounts payables, I processed orders. Not
4 all the time did I process the orders but I did process orders.
11:34 5 I answered phones, had customer relations, negotiated terms with
6 vendors and did payroll. Overall just looked out for the
7 goodwill of the company.

8 Q. And again, your voice is pretty soft, you may just want to
9 pull that microphone a little closer. It's pretty flexible.

11:34 10 A. Sure.

11 Q. Do you know who owns New Age Chemical?

12 A. Jim Stuart and myself. Jim Stuart is 70 percent and I'm 30.

13 Q. And has that always been the case?

14 A. Yes, sir. Well, no, it hasn't. It started out with my dad,
11:35 15 Jim Stuart, Sr., my father, and my brother had it, and they had
16 their equal distribution of their stock, and I purchased about
17 3 percent from my father around 1986 or 7. '87 or '88. And up
18 until about 2003, when we bought out my father's -- my father
19 had passed away and we bought out my mother's share of hers, we
11:35 20 bought that out, which made it 70/30.

21 Q. And what year was that?

22 A. 2003, approximately.

23 Q. And is that still the case right now?

24 A. Yes, sir.

11:35 25 Q. So at least from 2003 to the present you've been a 30

1 percent owner and your brother Mr. Stuart is the 70 percent
2 owner.

3 A. Yes.

4 Q. Does he also have a position at New Age Chemical?

11:35 5 A. President.

6 Q. Do you know what his responsibilities were during -- again,
7 I want to focus just on the time from 2003 when you became a 30
8 percent owner to when you retired in March of 2010. Do you know
9 what Mr. Stuart's, did he have any responsibilities at the
10 business?

11:36

11 A. He did quite a bit of the formulating for the formulas that
12 we have. And he also did customer contacts with discussing
13 things and solved quite a few problems with the customers if
14 there would be problems or something. He was there every day to
15 oversee basically the company.

11:36

16 Q. Now, you mentioned the company was originally started in
17 1985; who started the company?

18 A. My father Jim Stuart and my brother Jim Stuart, Jr.

19 Q. You also mentioned your father has since passed away; what
20 year did your father pass away?

11:36

21 A. Around 1997.

22 Q. And since the time of your father's death have there been
23 any other officers of New Age Chemical? You mentioned you're a
24 vice-president and your brother's the president, were there any
25 other officers?

11:37

1 A. No, sir.

2 Q. Any other owners?

3 A. No, sir.

4 Q. Now, prior to retiring in March of 2010, did you receive a
11:37 5 salary or any compensation from New Age Chemical?

6 A. Prior to 2010?

7 Q. Prior to retiring.

8 A. I received a salary up until around about 2008.

9 Q. And do you recall what your salary was when you last
11:37 10 received it in 2008?

11 A. It was around 7,000 a month.

12 Q. And how frequently were you paid that salary?

13 A. Twice a month.

14 Q. Were any other employees at New Age Chemical paid a salary?

11:38 15 A. Yes, sir.

16 Q. Was your brother, as president at New Age Chemical, paid a
17 salary?

18 A. Yes, sir.

19 Q. And how frequently was your brother paid a salary?

11:38 20 A. The same, twice a month.

21 Q. And do you recall in 2008 what your brother's salary was?

22 A. It was around 16,000 a month, I believe.

23 Q. \$16,000?

24 A. Yes.

11:38 25 Q. Now, again, I want to focus again on the period from 2003,

1 when you became a 30 percent owner, until the time you retired
2 in 2010. Do you recall -- I'm sorry, who handled payroll during
3 that period of time?

4 A. I did.

11:38 5 Q. And did you handle that all by yourself?

6 A. No, I called it into a firm called Payroll Data.

7 Q. And what did you call in?

8 A. For the hourly employees I would call in obviously the hours
9 they worked for that week and then I would, twice a month I
10 would call in Jim Stuart's and my salary.

11 Q. And how is the salary paid to you during that period of
12 time?

13 A. We started out getting checks. Payroll Data would send me
14 packets and I would just sign the checks and distribute them.
11:39 15 But after a certain period of time, I believe around 2006, we
16 started getting direct deposit.

17 Q. And was that the case for all of the employees including
18 your brother?

19 A. Yes, sir.

11:39 20 Q. And during the time the salary was being paid to you -- that
21 is, during the time 2003 to your retirement -- was there
22 withholding for questioned income taxes from your salary?

23 A. From mine, yes, sir.

24 Q. And would you receive a wage statement at the end of the
11:40 25 year, a W-2?

1 A. I received a W-2 up until I -- when I was receiving a
2 salary, yes, sir.

3 Q. And during that period of time 2003 through 2010, where did
4 New Age Chemical maintain its bank accounts?

11:40 5 A. We had bank accounts. It depended upon where the mortgage
6 was for the business. And we -- at one point it was Chase, at
7 one point it was M&I. I believe Waukesha State was in there at
8 one point, too.

9 Q. And did New Age Chemical maintain more than one account?

11:41 10 A. Yes.

11 Q. And, that is, more than one bank account?

12 A. Yes.

13 Q. And how many bank accounts would it typically maintain at
14 any one time?

11:41 15 A. Two. We had a payroll and a general operating account.

16 MR. JACOBS: Your Honor, I'd like to read a portion of
17 the stipulation and then move some exhibits into evidence, if I
18 could.

19 THE COURT: Proceed.

11:41 20 TRIAL STIPULATION NO. 6 ADMITTED

21 MR. JACOBS: Paragraph 6 of the stipulation of the
22 parties reads:

23 "If a representative of JPMorgan Chase Bank N.A. were
24 called to testify, he or she would testify that the following
11:41 25 exhibits are business records of the bank. The representative

1 of the bank would further testify that these records were
2 contemporaneously generated by persons with knowledge of the
3 information reflected in the records and/or received by the bank
4 in the regular course of its business activity and created
11:42 5 and/or received which the bank as a regular practice as part of
6 the bank's regularly conducted business activity. The parties
7 further stipulate and agree that these exhibits can be admitted
8 at the trial in this case."

9 And that pertains to Exhibits 60 through 70.

11:42 10 And with that, Your Honor, I would move into evidence
11 Exhibits 60 through 70.

12 THE COURT: They're received.

13 (Exhibits 60-70 offered and received.)

14 BY MR. JACOBS:

11:42 15 Q. Now, Ms. Schlipp, you mentioned that you used a payroll
16 service, Payroll Data to handle payroll; did there ever come a
17 time when the issue of how your brother James Stuart was
18 receiving his salary should be paid to him?

19 A. Yes.

11:43 20 Q. Do you recall when that issue first arose?

21 A. I would say around 2004-2005, around in there somewhere.

22 Q. And at that time would you have been handling the payroll
23 for New Age Chemical?

24 A. Was I?

11:43 25 Q. Yes.

1 A. Yes, sir.

2 Q. And what was the issue that arose?

3 A. He didn't want to have payroll taxes taken out.

11:43

4 Q. Did he tell you why he didn't want to have payroll taxes
5 taken out?

6 A. He didn't think that paying payroll taxes was legal.

7 Q. Do you have more than one brother?

8 A. Yes, sir.

11:44

9 Q. But in this context, when I refer to your brother I'm
10 referring to the defendant James Stuart, just so it's clear on
11 the record. Okay?

12 A. Uh-huh.

13 Q. And when your brother indicated he didn't want payroll taxes
14 taken out, did he direct you to do anything?

11:44

15 A. He directed me to call Payroll Data and not have them take
16 out the payroll tax.

17 Q. And was that just for his salary?

18 A. Yes.

11:44

19 Q. Now, you mentioned there was some hourly workers. Were
20 there any other employees at New Age Chemical that received a
21 salary, that is, were not paid as hourly workers? Was it just
22 you and your brother that received a salary?

23 A. No. There was his wife -- Jim's wife, Margie Stuart.

24 Q. She received a salary?

11:44

25 A. Yes.

1 Q. Do you know during what period of time she received a
2 salary?

3 A. I don't recall exactly.

4 Q. Okay. Anyone else?

11:44 5 A. We're saying up to what date?

6 Q. Okay. During the period 2003 to your retirement in 2010. I
7 don't know if there were any other salaried employees.

8 A. My husband Richard Schlipp.

9 Q. He was also a salaried employee?

11:45 10 A. Yes.

11 Q. Do you know what period of time he worked there?

12 A. He worked there around four years.

13 Q. And would that have been sometime during the period 2003 to
14 2010?

11:45 15 A. Yes.

16 Q. Okay. After you contacted Payroll Data Services did they
17 continue to issue payroll checks to your brother or make direct
18 deposits to your brother?

19 A. They didn't want to do it.

11:46 20 Q. So what happened?

21 A. I had Jim Stuart call Payroll Data and I do not know what
22 happened after that.

23 Q. Did he continue to receive a salary?

24 A. Oh, yes, sir, he did.

11:46 25 Q. And was it continued to be paid through Payroll Data

1 Services?

2 A. No. We started doing them at the company and at that
3 particular point I made -- I wouldn't sign any of those checks.

4 Q. Do you know when approximately that change took place?

11:46 5 A. I'd say around 2007. 6 or 7.

6 Q. And was that change made for all of the employees at New Age
7 Chemical?

8 A. No.

9 Q. Did you continue to receive a salary at New Age Chemical?

11:46 10 A. I received a salary up till around 2007, and then I started
11 getting -- receiving K-1s.

12 Q. But I think you said at some point your brother's salary was
13 not being paid through Payroll Data Services, was yours?

14 A. Yes, sir.

11:47 15 Q. And were you getting checks or direct deposits at that time?

16 A. Direct deposit.

17 Q. How about all the other employees?

18 A. Everyone was on direct deposit.

19 Q. And were there ever any changes made to the withholding on
11:47 20 any of the employees at New Age Chemical?

21 A. No.

22 Q. Did your brother, the defendant Mr. Stuart, did he continue
23 to get a salary even though it wasn't being handled by Payroll
24 Data Services?

11:47 25 A. Yes.

1 Q. And how was it paid?

2 A. Check.

3 Q. And who issued those checks?

4 A. I did.

11:47 5 Q. And again, you mentioned that New Age Chemical had more than
6 one bank account; do you know off of which bank account you
7 issued those checks?

8 A. That came off of the general account.

9 Q. And how frequently would you issue checks to your brother?

11:48 10 A. Twice a month.

11 Q. And do you know the amount of those checks?

12 A. 16,000. Approximately 8,000 twice a month.

13 Q. And for how long did that continue?

14 A. Until I left.

11:48 15 Q. Did you withhold taxes from those payments?

16 A. No, sir.

17 Q. Why not?

18 A. Because I was instructed by Jim Stuart not to. Jim was 70
19 percent, I was 30 percent, I feared for my job because he was
11:48 20 supermajority and I could be fired.

21 Q. How do you know that?

22 A. He told me several times.

23 Q. Well, did you at least prepare a W-2 at the end of the year
24 for your brother's payments?

11:49 25 A. We prepared K-1s.

1 Q. Did you prepare one for your brother?

2 A. Yes, sir.

3 Q. And that is, you personally prepared that?

4 A. No.

11:49 5 Q. Who prepared it?

6 A. The latter part it was Suby, Joel Nettesheim. Before that
7 it was Clifton Gunderson.

8 Q. When you were issuing these checks to your brother, who were
9 they made payable to you?

11:49 10 A. Originally they were paid made payable to him, but after the
11 point when after he went -- the discussion with the Payroll
12 Data, it was made out to New Age Chemical Draw.

13 Q. Do you know what that is?

14 A. It was an account that Jim had set up that had -- an account
11:50 15 that Jim had set up for himself.

16 Q. Now, I'd like to show you exhibits from the bank records.
17 They're marked as 67A -- 68A -- sorry. Let me back up just one
18 second.

19 I show you what have been marked for identification as
11:50 20 65A, 67A, 68A, and 70A.

21 And for the record, these are just parts of
22 Exhibits 65, 67, 68, and 70.

23 I wonder if you could take a look at those and then
24 I'll ask you some questions.

11:52 25 (Witness peruses document.)

1 BY MR. JACOBS:

2 Q. Ms. Schlipp, have you reviewed those four pages?

3 A. Yes, sir.

4 Q. And do you recognize what those are?

11:52 5 A. They're compensation for Jim Stuart.

6 Q. And just looking at the first page of 65 which is from
7 Exhibit 65A, whose handwriting is that?

8 A. That's mine.

9 Q. Now, I know you probably can't see on the monitor, but is
11:53 10 there -- you have an endorsement on the paper copy you have
11 there, do you recognize that handwriting?

12 A. Yes, it's Jim Stuart's.

13 Q. And each of these checks that are in 65A, are they all
14 issued by you?

11:53 15 A. Yes, they are.

16 Q. And do you recognize each of those checks?

17 A. Yes, I do.

18 Q. And what are they?

19 A. Compensation checks.

11:53 20 Q. Do you know how those were delivered to your brother?

21 A. I wrote them and put them on his desk.

22 Q. And did you withhold any taxes, payroll taxes, Medicare
23 taxes, Social Security taxes from these compensation checks?

24 A. No, sir.

11:54 25 Q. And why not?

1 A. Because I was told not to by Jim Stuart.

2 Q. And I'd like to have you just look at the checks that are in
3 67A. Do you see them there?

4 A. Yes, I do.

11:54 5 (Witness peruses document.)

6 A. Yes, sir.

7 BY MR. JACOBS:

8 Q. Now, I notice the checks in 65A, they're written on an
9 account, the New Age Chemical payroll account, but the checks in
10 67A, is that a different account?
11:54

11 A. Yes, the original packet was written out on the payroll
12 account; the other ones that were done in print were the
13 operating account.

14 Q. And do you know why there were different accounts used for
15 the checks in 67A?
11:55

16 A. I believe this is around the same time that he didn't have
17 direct deposit anymore.

18 Q. But obviously 65A are all checks also.

19 A. Yes.

11:55 20 Q. But they're on the payroll account.

21 A. Yes.

22 Q. These seem to be written off the operating account. Do you
23 recall why you began writing checks off the operating account?

24 MR. BERNHOFT: Objection, the witness already answered
11:55 25 the question.

1 THE COURT: Overruled.

2 BY MR. JACOBS:

3 Q. You can answer if you know.

4 A. I don't know if there really was a reason for that.

11:55 5 Q. Okay. And do you know what the purpose for issuing these
6 checks was?

7 A. Compensation for Jim Stuart.

8 Q. And did you withhold taxes from these payments to your
9 brother?

11:55 10 A. No, sir.

11 Q. And why not?

12 A. I was told by Jim Stuart not to.

13 Q. And again, all of the checks, the signatures authorizing the
14 checks themselves, is that your signature?

11:56 15 A. Yes, sir.

16 Q. And the endorsements on the back of the checks, do you
17 recognize whose signature that is?

18 A. Yes, Jim Stuart's.

19 Q. Turning to the package of checks that's in 68A, do you have
11:56 20 those in front of you?

21 A. I do.

22 Q. Do you recognize what the purpose -- do you recognize these
23 checks?

24 A. Yes, I do.

11:56 25 Q. And what are these checks?

1 A. Compensation for Jim Stuart.

2 Q. Now, the initial checks in 68A appear similar to what are in
3 65 and 67A.

4 THE COURT: Is that a question?

11:57 5 BY MR. JACOBS:

6 Q. I note that when you go to the last four or five, are those
7 checks different in any way?

8 A. Yes, sir. I was not signing them anymore, Jim Stuart was.

9 Q. Do you know when that started?

11:57 10 A. Around that time, 2007.

11 Q. Can you identify the first time one of the checks was not
12 signed by you?

13 A. Do I identify it?

14 Q. Can you see in there when that starts?

11:57 15 A. Yes, I do.

16 Q. When is that? What's the date of that check?

17 A. It was 5/16 of 2007.

18 Q. Do you recall why that happened?

19 A. I did not want to sign his paychecks anymore because I did
11:57 20 not believe in taxes not coming out of the account.

21 Q. Did you express that to your brother?

22 A. Yes, I did, sir.

23 Q. And what did he say, if anything?

24 A. That if I didn't want to start signing paychecks then I
11:58 25 didn't really have a job there.

1 Q. Do you recognize his signature on the checks?

2 A. Yes, I do.

3 Q. And those checks, do you know what the purpose of those
4 checks were?

11:58 5 A. Compensation.

6 Q. Would you have been still maintaining the books and records
7 for this account at that time?

8 A. Yes, sir.

9 Q. Was there any withholding of taxes from these compensation
11:58 10 checks paid to your brother?

11 A. No, sir.

12 Q. Now, you were getting a salary at this time, correct?

13 A. Yes.

14 Q. Were there taxes being withheld from your salary for New Age
11:58 15 Chemical?

16 A. Yes, sir.

17 Q. Now, the endorsement on those checks that your brother
18 signed, do you see the endorsement?

19 A. Yes.

11:58 20 Q. Do you recognize the handwriting?

21 A. Some of them do not look like his signature.

22 Q. There appear to be three or four letters after a signature.
23 Do you recognize what those three or four letters are?

24 A. That stands for, I was told, trustee.

11:59 25 Q. Who told you that?

1 A. Jim Stuart.

2 Q. Did he explain what that meant?

3 A. He might have explained it but I didn't understand exactly
4 what the trustee was for.

11:59 5 Q. And, finally, if I could turn your attention to Exhibit 70A.
6 Not finally, but --

7 Do you recognize what the checks in Exhibit 70A are?

8 A. Yes, sir.

9 Q. What are those?

11:59 10 A. These are compensation for Jim Stuart.

11 Q. And who is the authorizing signature on these checks?

12 A. I am, sir.

13 Q. Now, these checks, the first one is dated August 14 of 2007.
14 Did you resume writing out the checks?

12:00 15 A. Another -- Jim formed another entity called New Age
16 Chemical, Ltd., and he said that if I signed those checks that
17 it was a complete different entity and I could not be injured by
18 it.

19 Q. Do you remember when he did that?

12:00 20 A. Around 2007.

21 Q. So as a result of that did you begin signing these checks?

22 A. Yes, I did.

23 Q. Now, I notice on the first one there appear to be some
24 letters or some symbols after your name on the August 14, 2000
12:00 25 check; do you know what that is?

1 A. He told me to put the TTEE on there as protection.

2 Q. Protection from what?

3 A. I'm not quite sure, sir.

4 Q. Do you recognize the endorsement on the check?

12:01 5 A. Yes, I do.

6 Q. Whose handwriting is that?

7 A. Jim Stuart's.

8 Q. There seems to be more written there than a signature; do
9 you know what else is written there?

12:01 10 A. This particular check was made out to the New Age Chemical
11 Drawing Account. And that's why it says "New Age Chemical" as
12 an endorsement on the back, Drawing Account.

13 Q. The payee on this check is different than the other checks?

14 A. Yes.

12:01 15 Q. Why is that?

16 A. I don't know why he did that.

17 Q. Did you make that change?

18 A. I was told to by Jim Stuart.

19 Q. Were the purpose of these checks the same as all the other
12:01 20 checks we've been looking at?

21 A. Yes, sir.

22 Q. Are you familiar with this entity New Age Chemical, Ltd.
23 Drawing Account?

24 A. Yes, sir.

12:02 25 Q. What is that?

1 A. It's a -- I'm not quite sure how to explain it.

2 Q. Okay. Are you a part of it?

3 A. It's papers that were drawn up for Kingdom of Israel type
4 limited company. Corporation.

12:02 5 Q. Do you know who set that up?

6 A. Jim Stuart.

7 Q. Did he provide you any explanation about what it was?

8 A. To basically, I suppose, fly under the radar of any tax
9 problems.

12:03 10 Q. Are those his words?

11 A. So to speak.

12 Q. Now, did New Age Chemical -- do you know what kind of
13 business it is, what type of tax business it is? I mean, what
14 kind of structure it has for tax purposes?

12:03 15 A. New Age Chemical is an S Corp.

16 Q. During the time you've been an owner, a 30 percent owner,
17 has that always been the case?

18 A. When I -- yes, sir. Since I've been owner.

19 Q. And does New Age Chemical -- I'm sorry, did New Age
12:03 20 Chemical, during the time you were working there from 2003 to
21 2010, did it file federal income tax returns?

22 A. Every year, yes.

23 Q. And you mentioned, do you know who prepared those tax
24 returns?

12:03 25 A. In the beginning a firm called Clifton Gunderson prepared

1 them, and then a firm called Suby and Schloedorn (sic).

2 Q. Is it like Suby Von Haden?

3 A. Yes.

4 Q. Was there someone in particular you dealt with at Clifton
12:04 5 Gunderson?

6 A. I dealt with a gentleman called Pat Walsh.

7 Q. And do you know when you first started dealing with
8 Mr. Walsh?

9 A. As long as I was there. Since I started in 1987.

12:04 10 Q. And did Mr. Walsh have any type of relationship with you or
11 your family other than preparing the tax returns?

12 A. He's a close friend of the family.

13 Q. Was he familiar with your father?

14 A. Very much so.

12:04 15 Q. Do you know if he ever had any position with New Age
16 Chemical?

17 A. He consulted with us.

18 Q. And do you know when he stopped preparing the tax returns
19 for New Age Chemical?

12:05 20 A. I wanna say around 2004.

21 Q. And do you know why that is?

22 A. He didn't want to have -- he knew that Jim Stuart was not
23 paying taxes and he --

24 MR. BERNHOFT: Objection, hearsay, Your Honor.

12:05 25 THE COURT: Sustained.

1 BY MR. JACOBS:

2 Q. Did Mr. Walsh ever have a meeting with you and your brother?

3 THE COURT: One second. The last response to the
4 question is stricken. It must be disregarded.

12:05 5 Proceed.

6 BY MR. JACOBS:

7 Q. Did Mr. Walsh ever meet with you and your brother concerning
8 whether he would continue to prepare tax returns for New Age
9 Chemical?

12:05 10 A. Yes.

11 Q. Were you present at that meeting?

12 A. Yes.

13 Q. And did Mr. Walsh tell your brother why he wouldn't prepare
14 taxes?

12:05 15 A. Yes.

16 Q. Why did he tell your brother?

17 MR. BERNHOFT: Objection, hearsay.

18 THE COURT: Side bar.

19 (At side bar on the record.)

12:06 20 MR. JACOBS: Judge, it's a verbal act. We have to
21 prove knowledge. So the fact that someone tells the defendant
22 facts establishes his knowledge. Whether it's true or not is
23 not relevant. What's relevant is whether he's been told certain
24 things and he therefore has knowledge of them.

12:06 25 MR. BERNHOFT: That's a little bit confusing in terms

1 of that statement. What I object to is hearsay. Mr. Walsh is
2 going to be a witness in this case. If Mr. Jacobs wants to ask
3 Mr. Walsh what he told Mr. Stuart at a meeting he can ask that
4 witness.

12:06 5 MR. JACOBS: But we have the firsthand witness of that
6 meeting, he being told facts by a third party. So it's not
7 hearsay. I have the person saying I heard this said to the
8 defendant.

9 THE COURT: Let's clarify to make sure she was a party
12:06 10 to the conversation. So the objection is subject to the
11 response.

12 MR. BERNHOFT: Okay. Thank you.

13 (End of discussion at side bar.)

14 BY MR. JACOBS:

12:07 15 Q. Ms. Schlipp, I just want to make sure it's clear, were you
16 present during a meeting between Mr. Walsh and your brother
17 James Stuart?

18 A. Yes, sir.

19 Q. And did you hear Mr. Walsh tell your brother James Stuart
12:07 20 certain things?

21 A. Yes, sir.

22 Q. And so you were a party to this meeting?

23 A. Yes.

24 Q. Okay. So, again, I want to focus on what you specifically
12:07 25 heard Mr. Walsh tell your brother James Stuart.

1 THE COURT: One second. Please clarify the timeframe.

2 MR. JACOBS: Sure.

3 BY MR. JACOBS:

4 Q. Do you know approximately when this meeting took place?

12:07 5 A. Approximately 2005, 4 or 5.

6 Q. And where did the meeting take place?

7 A. At New Age Chemical.

8 Q. And other than you, your brother and Mr. Walsh, was anyone
9 else present?

12:08 10 A. Not at that particular meeting.

11 Q. And what did Mr. Walsh tell your brother?

12 A. Excuse me, one other person was present, Allison Reese.

13 Q. Okay. And that's your daughter?

14 A. Yes.

12:08 15 Q. And what did Mr. Walsh tell your brother?

16 A. That he should be paying taxes. It's going to get New Age
17 Chemical in trouble. That he's doing wrong by doing this. And
18 listed quite a few reasons why, you know, Jim should be paying
19 taxes.

12:08 20 Q. Do you know how long that meeting lasted?

21 A. I have no idea. I'm sorry.

22 Q. After the meeting did Mr. Walsh continue to provide tax
23 preparation services to New Age Chemical?

24 A. No.

12:08 25 Q. Let me ask you, did Mr. Walsh provide any other services

1 other than tax preparation services to New Age Chemical, to you
2 or other members of your family?

3 A. He continued to do my mother's tax return. He did not
4 prepare mine anymore either.

12:09 5 Q. Had he in the past?

6 A. Yes, sir.

7 Q. Do you know if he prepared any other -- had prepared tax
8 returns for any other members of your family prior to this
9 meeting?

12:09 10 A. Prior to the meeting?

11 Q. Yes.

12 A. He just prepared -- prior to the meeting mine and my
13 mother's, prior to the meeting.

14 Q. Do you know if he prepared your brother's tax returns for
15 prior years?

16 A. I don't know whether he did or not.

17 Q. Okay. So after the meeting with Mr. Walsh, did you continue
18 to work at New Age Chemical?

19 A. Yes, sir.

12:09 20 Q. Did you continue to handle the payroll?

21 A. Yes, sir.

22 Q. Did you continue to issue payroll compensation checks to
23 your brother?

24 A. Yes.

12:09 25 Q. And did you withhold taxes from those?

1 A. No.

2 Q. Now, as a shareholder, a 30 percent owner of New Age
3 Chemical, did you receive income from the business as an owner
4 of the business?

12:10 5 A. You mean as far as -- paycheck type thing?

6 Q. No. Distributions or have to report income from New Age
7 Chemical on your tax returns.

8 A. I received a K-1 at the end of each year.

9 Q. And do you know what information is on a K-1?

12:10 10 A. A K-1 generally is where the tax burden instead of being on
11 the company it filters down into the tax return of the
12 individual owner/partner.

13 Q. And did you receive one of those for each of the years when
14 you were an owner of New Age Chemical?

12:10 15 A. Yes, sir.

16 Q. And did you report that on your tax returns?

17 A. Yes, sir.

18 Q. And I think you said that prior to 2004 the tax returns for
19 New Age Chemical were prepared by Clifton Gunderson, and they
12:11 20 stopped preparing them at some point?

21 A. Yes, they did.

22 Q. Do you know who prepared the tax return for New Age Chemical
23 for the next year?

24 A. My daughter, Allison Reese.

12:11 25 Q. And did you sign and file that return?

1 A. Yes, sir.

2 Q. And did you get a K-1 reflecting the income that you were
3 responsible for from that business?

4 A. I did.

12:11 5 Q. And was there a K-1 for your brother for his share of the
6 income?

7 A. Yes, sir.

8 Q. Do you know if he received it?

9 A. It was placed on his desk.

12:11 10 Q. Who placed it on his desk?

11 A. I did.

12 Q. Do you know, were tax returns prepared for New Age Chemical
13 for the following years, after the one your daughter prepared?

14 A. Yes.

12:11 15 Q. And do you know who prepared those?

16 A. Joel Nettesheim from Suby.

17 Q. He works for an accounting firm, something like Suby, Von
18 Haden?

19 A. Yes, sir.

12:12 20 Q. And did you continue to receive K-1s from him?

21 A. Yes.

22 Q. Do you know if your brother continued to receive those K-1s?

23 A. I put them on his desk.

24 Q. While you were working at New Age Chemical during the years
12:12 25 2003 through 2010, did you ever see correspondence from the

1 Internal Revenue Service?

2 A. I saw envelopes from the Internal Revenue Service.

3 Q. Did you ever discuss those envelopes with your brother James
4 Stuart?

12:12 5 A. We were told not to open them, to send them back.

6 Q. When you said "we were told," who told you that?

7 A. Jim Stuart.

8 Q. Do you know when he first told you that?

9 A. I don't remember the date.

12:12 10 Q. Do you know approximately what year it would have been?

11 A. I would say around the 2004 or 5. I'm not sure on that.

12 Q. Were you given -- did Mr. Stuart give you any other
13 instructions besides not to open and to return?

14 A. There was supposed to be marked on the outside -- I'm not

12:13 15 quite sure what the -- it's been awhile since I've been there --
16 the exact thing that was supposed to be written on the outside
17 before they were returned.

18 Q. Can you paraphrase, give me a sense of what you were
19 supposed to write?

12:13 20 MR. BERNHOFT: Objection, form.

21 THE COURT: Sustained.

22 BY MR. JACOBS:

23 Q. Could you describe what Mr. Stuart told you to write on the
24 outside of the letters?

12:13 25 A. Exactly?

1 Q. As best as you can recall.

2 A. Something about refused, mail service, legal matters.
3 Something like that.

4 Q. And did you ever do that?

12:13 5 A. I put them on Jim's desk. I did not.

6 Q. Did you observe your brother give anyone else those
7 instructions?

8 A. Yes.

9 Q. Who else did he give those instructions to?

12:14 10 A. My husband, Rich Schlipp. Margie Stuart.

11 Q. And that's your brother's wife?

12 A. Yes.

13 Q. What was her job at New Age Chemical?

14 A. Receptionist and receivables. Taking orders.

12:14 15 Q. Can I ask, when is the last time you talked to your brother?

16 A. I would say a year.

17 MR. JACOBS: Judge, that's all I have for the witness.

18 THE COURT: We'll break at this time. Please do not
19 discuss your testimony with anyone. And please return at 1:00
12:14 20 o'clock. We will break at this time. Have a good lunch. Do
21 not discuss the case or have any communication with anyone
22 respecting the case in order to preserve your integrity and the
23 process.

24 THE BAILIFF: All rise.

12:15 25 (Jury out at 12:15 p.m.)

1 (Lunch recess taken at 12:15 p.m., until 1:01 p.m.)

2 THE COURT: Are you ready to proceed? If so I'll get
3 the jury out here. Do you have your witness? Please come
4 forward.

01:03 5 (Jury in at 1:03 p.m.)

6 MR. BERNHOFT: May I proceed, Your Honor?

7 THE COURT: Yes, you may.

8 MR. BERNHOFT: Thank you.

9 CROSS-EXAMINATION

01:04 10 BY MR. BERNHOFT:

11 Q. Good afternoon, Ms. Schlipp.

12 A. Good afternoon.

13 Q. As you are probably aware, I'm Bob Bernhoft, I represent
14 your husband Jim Stuart in this case.

01:04 15 THE COURT: One second. Did you say husband?

16 MR. BERNHOFT: I'm sorry?

17 THE COURT: Did you say husband?

18 MR. BERNHOFT: I'm sorry. Sorry about that.

19 BY MR. BERNHOFT:

01:04 20 Q. I represent your brother Jim Stuart in this action.

21 Thank you for your tolerance.

22 THE COURT: I saw a perplexed look on her face.

23 (General laughter.)

24 BY MR. BERNHOFT:

01:04 25 Q. Now, Ms. Schlipp, you indicated that your brother Jim Stuart

1 had -- the reason that you were writing these checks to him
2 personally that weren't going through the payroll processing
3 service, that he had, you know, threatened to fire you if you
4 stopped writing those checks; is that correct?

01:05 5 A. Yes, sir.

6 Q. Now, there came a time, though, in early May 2007, where you
7 indeed stopped writing checks and, as the evidence showed,
8 Mr. Stuart started to sign his own checks; is that correct?

9 A. Yes, sir.

01:05 10 Q. And did your brother fire you for not writing those checks?

11 A. No, sir.

12 Q. Can I ask you again, just to confirm, when did you start
13 working for your father's and brother's company? Was that late
14 '80s?

01:05 15 A. About 1987.

16 Q. Okay. So about how long did you work for New Age -- for
17 your brother's company before your retirement?

18 A. The entire time until 2010. 2010, yes.

19 Q. So like about 23 years?

01:05 20 A. Approximately, yes.

21 Q. When did Mr. Stuart hire your husband to work for his
22 company?

23 A. He worked there approximately four years and he retired
24 probably 2007 maybe. Around in there.

01:06 25 Q. Okay. And do you know how much Jim Stuart paid your husband

1 to work at New Age?

2 A. I believe 40,000. Between 40 and 45.

3 Q. And that would be per year?

4 A. Yes.

01:06 5 Q. Okay. And how much was your brother Jim Stuart paying you
6 from New Age to work there?

7 A. At what particular time was that?

8 Q. Let's say between 2004 and up and through your retirement.

9 A. Because I wasn't receiving a paycheck because I received a
01:06 10 K-1.

11 Q. Uh-huh.

12 A. So --

13 Q. But you were also receiving salary compensation?

14 A. No, not after probably 2009. 2008 I just started receiving
01:07 15 a K-1.

16 Q. Around in about 2008.

17 A. 2008, yes.

18 Q. Okay. And that led up to your retirement in round about
19 2010?

01:07 20 A. Yes, sir.

21 Q. Okay. Prior to 2008 then, in the early 2000s, approximately
22 how much a year were you making from New Age?

23 A. Approximately 7,000 a month.

24 Q. So around about 84,000 a year?

01:07 25 A. If that's what it calculates to, yes.

1 Q. Okay. So then total between your husband and you for that
2 series of years in the early 2000s, Jim Stuart was paying your
3 immediate family directly around about \$130,000 a year?

4 A. Yes, sir, if that's what it -- yes.

01:07 5 Q. And then you also received this K-1 income as a 30 percent
6 owner of the company, correct?

7 A. I didn't receive both at that time, no. We took the
8 paycheck, and then after a point we were told by Joel Nettesheim
9 that being owners of the company we should be just receiving
01:08 10 K-1s instead of a compensation.

11 Q. Okay.

12 A. So I received the same amount regardless whether it was a
13 paycheck or it was a K-1.

14 Q. I see. So it was sort of a cash flow/cash revenue
01:08 15 management device?

16 A. It was the same thing. It just went from a W-2 into a K-1.

17 Q. Okay. Did your brother Jim Stuart ever instruct you not to
18 record the checks that were being written to him or his entities
19 on the New Age company's books and records?

01:08 20 A. No, sir.

21 Q. So it would be true then that every single check that New
22 Age paid over to your brother or his entities was properly
23 recorded by you in the books?

24 A. Yes, sir.

01:08 25 Q. Did your brother ever try and instruct you, or did he

1 instruct you, when it came to giving information to the CPAs and
2 accountants that were working for him and the company, did he
3 ever instruct you not to provide all of the books and records so
4 that the CPAs had full information to do their work?

01:09 5 A. No, sir.

6 Q. Did your brother ever attempt to impede employees at New Age
7 from having their withholding taxes withheld from the company
8 and then paid over to IRS?

9 A. He would talk to the employees about not doing it, but he
01:09 10 never forced the employees to do it.

11 Q. Isn't it true he gave them a choice, they could choose?

12 A. He gave them a choice, yes.

13 MR. BERNHOFT: That's all I have, Your Honor.

14 THE COURT: Redirect?

01:09 15 MR. JACOBS: No. Nothing, Judge.

16 THE COURT: You may step down. Please did not discuss
17 your testimony with anyone unless you're advised this case has
18 been completed. Have a good afternoon.

19 THE WITNESS: Thank you.

01:10 20 (Witness excused at 1:10 p.m.)

21 MR. JACOBS: Your Honor, next we would call Allison
22 Reese.

23 THE REPORTER: Raise your right hand, please.

24 ALLISON REESE, GOVERNMENT WITNESS, SWORN

25 THE REPORTER: Please state your name and spell your

1 name for the record.

2 THE WITNESS: My name is Allison Reese, that's

3 A L L I S O N, last name Reese, R E E S E.

4 DIRECT EXAMINATION

01:11 5 BY MR. JACOBS:

6 Q. Good afternoon, Ms. Reese. Ma'am, where do you currently
7 reside?

8 A. Falls Church, Virginia.

9 Q. How long have you lived in Falls Church, Virginia?

01:11 10 A. Four years.

11 Q. And were you recently married?

12 A. I was. In August.

13 Q. And is your last name then different than Reese or where are
14 you in that --

01:11 15 A. In the legal process I'm still Reese. My married name is
16 Putland.

17 Q. Putland?

18 A. Uh-huh.

19 Q. Can you tell me, what's your educational background? How
01:12 20 far did you go in school?

21 A. I graduated from UW Milwaukee with a accounting degree.

22 Q. And when was that?

23 A. In December of 2000.

24 Q. And are you currently working?

01:12 25 A. I am.

1 Q. Where are you employed?

2 A. I'm employed with a company called Bridge Street, and my
3 profession is director of accounting.

01:12 4 Q. Now, you have kind of a soft voice and so if you could maybe
5 lean into the microphone it will help carry.

6 A. Sure. That's the first time I've heard that. Sorry.

7 Q. They don't know you as well.

8 A. I suppose not.

9 Q. Can you tell me, what are your responsibilities in your
01:12 10 current position?

11 A. In my current position I actually have 13 employees that
12 report to me. I handle, on the U.S. side -- well, the company I
13 work for is a global company, so from the U.S. side I handle all
14 of the U.S. transactions as well as the -- and, I apologize, the
01:13 15 APAC which is our Asia Pacific.

16 From that then for the month-end close procedures I
17 handle all of the London and Paris financial statements come
18 over to me. I have a counterpart over there that handles all
19 the day-to-day transactions. She then gives me the month-end
01:13 20 financial statements. I then pull together all of the U.S.
21 financial statements with a staff of general accountants, senior
22 accountants, that then give those to me so I can do the
23 consolidated financial statements.

24 In addition, too, I help out with forecasting,
01:13 25 budgeting, and any other ad hoc reports that I need to do.

1 Q. Okay. How long have you had that job?

2 A. For four years.

3 Q. What did you prior to that?

4 A. Before that I was a auditor for a mid-sized accounting firm.

01:13 5 Q. Where was that located?

6 A. In Brookfield, Wisconsin.

7 Q. And what's the name of that firm?

8 A. Vrakas Blum.

9 Q. And is it V R A K A S?

01:14 10 A. Yes.

11 Q. And then Blum, B L U M?

12 A. Correct.

13 Q. Okay. And during what period of time did you work at Vrakas
14 Blum?

01:14 15 A. From the time I graduated from college, so January of 2001,
16 until I moved to Virginia in October of 2007.

17 Q. And would you explain to the jury what that job entailed at
18 Vrakas Blum?

19 A. Yes. As an external auditor my objective was to go in as an
01:14 20 independent person to review their -- not review but perform an
21 audit on their year-end financial statements. And so what that
22 means, is I had to comply with the governing bodies of the
23 Accounting Standards Board to ensure that we were following how
24 to -- well, through audit testing.

01:14 25 So what is audit testing? Audit testing would be we

1 would go in, look at the year-end financial statements, and
2 starting off with cash. We would say, okay, we need to validate
3 this, and from that we would send off the bank confirmation to
4 the respective bank to say this number that they're actually
01:15 5 showing on the balance sheet does tie to what the client that we
6 had is stating as such.

7 So, essentially, my job was to go in through these
8 testings and ensure that the company itself -- so the person,
9 now essentially me, and what I do, because we have external
01:15 10 accountants come in and do audits on our work to ensure that the
11 users of the financial statements can rely on the validity and
12 the accuracy of it. And ultimately to ensure that the financial
13 statements are materially free from error, whether due to fraud
14 or material misstatement.

01:15 15 And that, from an audit standpoint, as mentioned, we'd
16 send out bank confirmations. In addition to we'd send out
17 confirmations to a random selection of accounts receivable. As
18 well as do year-end inventory observations. Statistical
19 sampling on the inventory. We'd also review the P&Ls, make sure
01:16 20 that the -- perform analytics on their P&Ls to ensure that year
21 over year as well as what we're seeing reported on the financial
22 statements make sense.

23 In addition, you review their internal controls to
24 ensure that as the company is operating that they have --
01:16 25 they're securing their safeguards over their assets. So at the

1 end of the day you'd sit down with maybe one of their associates
2 and make sure that the same person who receives the mail in
3 isn't the same person that may get a check and then record that
4 cash into the general ledger, which then ultimately reflects the
01:16 5 year-end financial statements.

6 Working at Vrakas as an auditor, what we actually did
7 is all of our clients were privately held companies. So the
8 bank actually would say within -- they'd borrow or lend the
9 company money and say as part of lending you money one of the
01:16 10 things that you have to do is you have to have this external
11 independent audit report. And so from that we go in, perform
12 our audit procedures within the governing bodies, and ensure
13 that they were -- provide assurance that they're relatively free
14 of error.

01:17 15 Q. And you mentioned a couple of terms, I just want to be
16 clear. You said P&L, that's a profit and loss statement?

17 A. Sorry, yes.

18 Q. That one of your clients would have one and your job was to
19 make sure that it was accurate.

01:17 20 A. Correct.

21 Q. And you did that for approximately six, six and a half
22 years?

23 A. Correct.

24 Q. Now, do you know an individual named James Stuart?

01:17 25 A. I do.

1 Q. And how do you know James Stuart?

2 A. He's my uncle.

3 Q. And how is he your uncle?

4 A. It's my mom's brother.

01:17 5 Q. And do you see him here today?

6 A. I do.

7 Q. Could you just identify him by where he's seated and what
8 he's wearing?

9 A. He's the gentleman sitting at the end in the blue jacket
01:17 10 with the tie.

11 Q. That could be anybody back there, but on the far left-hand
12 side?

13 A. Far left-hand side, yes.

14 MR. JACOBS: I'd ask the record reflect the witness
01:18 15 has identified the defendant, Your Honor.

16 THE COURT: Noted.

17 BY MR. JACOBS:

18 Q. And do you know what your uncle does for a living?

19 A. Yes. He is a 70 percent owner in a company called New Age
01:18 20 Chemical.

21 Q. And are you familiar with that business?

22 A. I am.

23 Q. Do you know where it's located?

24 A. It's located in Delafield, Wisconsin.

01:18 25 Q. And do you know what kind of business it is?

1 A. I do. Their primary product is a coolant in which they
2 manufacture so that the machines do not burn out, essentially.

3 Q. And you mentioned that he's the 70 percent owner, do you
4 know who the other owner or owners are of the business?

01:18 5 A. I do.

6 Q. And --

7 A. My mom.

8 Q. I'm sorry?

9 A. My mother, Beverly Schlipp.

01:18 10 Q. Anybody else?

11 A. No.

12 Q. Now, do you know if your mother has ever worked for New Age
13 Chemical?

14 A. She did, yes.

01:19 15 Q. Do you know what her position was?

16 A. Her position at the time was vice-president.

17 Q. And do you know what her responsibilities were?

18 A. My mom's objective when she was there was she handled all of
19 the financial statements. She handled the day-to-day

01:19 20 transactions of payables, receivables. Ensuring that the

21 inventory counts were in line with what was being reported on

22 the financial statements. In addition to she would ensure that

23 cash flow was up to spec. Compliance of their note with the

24 bank. As well as just interacting with the vendors and

01:19 25 instances that they needed to switch around maybe for additional

1 cash flow as well as with their clients to ensure the goodwill
2 with their clients.

3 Ultimately, too, at the end of the day she would
4 prepare the monthly financial statements, the annual financial
01:19 5 statements, which would -- which she'd send off to the
6 accounting firm so that they could prepare the tax returns.

7 Q. Have you ever been worked at New Age Chemical?

8 A. I did, yes.

9 Q. When was that?

01:20 10 A. It would have been in 1997.

11 Q. And why were you working there in 1997?

12 A. My mom actually had a horseback riding accident where she
13 fell off her horse and the ball came out of the socket and the
14 bone connected to it snapped in half. So needless to say, she
01:20 15 had to have several surgeries. At the time I was in college, so
16 it was actually December of 1997, it was a break, and I went in
17 and tried to help fill in with her day-to-day accounting
18 functions.

19 And then, ultimately, in the summer of 1998, I worked
01:20 20 there over the span of that summer to assist again for another
21 operation she had to have.

22 Q. Is it fair to say you performed your mother's functions so
23 she could have her surgeries?

24 A. Correct.

01:20 25 Q. And do you know what your uncle James Stuart's

1 responsibilities were at New Age Chemical?

2 A. Yes. He was the president of New Age Chemical. And what
3 Jim did was, he maintained all of the -- all of their products.
4 He would also ensure if there was a tweak of a product that
01:21 5 needed to be made he dealt directly with the clients and ensured
6 that if something else needed to be tweaked he had the knowledge
7 base to go out and research that, change anything that might
8 need to be done. Sales.

9 Q. Now, did you ever have occasion to discuss with your uncle
01:21 10 his views on the U.S. tax system?

11 A. I did.

12 Q. Do you recall the first time you had any discussions with
13 your uncle about the U.S. tax system?

14 A. The first time that I had a discussion with him it was in
01:21 15 the summer of like 2005, at a bonfire that he had at his home.
16 It was the first time I ever heard of his views on taxes. At
17 that point in time the discussion really didn't go that far and
18 I didn't really think much of it.

19 Q. Do you recall what, if anything, your uncle told you about
01:22 20 his views of the U.S. tax system at that summer bonfire?

21 A. The only thing that I do recollect was that he had
22 referenced that taxes were unconstitutional. To be quite
23 honest, the views were so far outside my --

24 MR. BERNHOFT: Objection.

01:22 25 THE COURT: Objection sustained.

1 BY MR. JACOBS:

2 Q. Do you recall anything else that he said?

3 A. I do not.

01:22

4 Q. Now, at that time what were you doing for a living? In the
5 summer of 2005.

6 A. I was currently employed at Vrakas Blum as an auditor.

7 Q. Did you have any further discussions with your uncle
8 concerning his views on the U.S. tax system after the summer of
9 2005?

01:22

10 A. I did.

11 Q. And when was that?

12 A. It was not until March of 2007.

13 Q. And again, at that time what were you doing for a living?

14 A. I was sill an auditor at Vrakas Blum.

01:23

15 Q. And can you describe the circumstances that you had
16 discussions with your uncle?

17 A. Yeah. It was printout to my attention from my mom that she
18 was no longer --

19 MR. BERNHOFT: Objection, hearsay.

01:23

20 MR. JACOBS: It's not hearsay.

21 THE COURT: Overruled.

22 MR. JACOBS: I'm sorry, go ahead. What was brought to
23 your attention?

01:23

24 THE WITNESS: It was brought to my attention by my mom
25 that they were no longer withholding payroll taxes from their

1 paychecks. Needless to say I freaked out but was definitely
2 concerned and explained to my mom that she couldn't do that.
3 From that, I actually went to my mom's house and sat down with
4 her and found out what was really going on at that point.

01:23 5 BY MR. JACOBS:

6 Q. Now, do you recall when was this?

7 A. It was March of 2007.

8 Q. And while at your mother's house did you do any research?

9 A. Yes.

01:24 10 Q. Can you describe the type of research that you did?

11 A. Well, at that point in time based on what my mom had told
12 me, that Jim's views were --

13 THE COURT: One second. Ask another question.

14 MR. JACOBS: Could I be heard at side bar, Judge?

01:24 15 (At side bar on the record.)

16 THE COURT: I stopped the witness because she was
17 getting into views of the defendant that weren't necessarily
18 statements that were made to her by the defendant or statements
19 in front of the defendant.

01:25 20 MR. JACOBS: She only needs to explain why she did
21 what she did. That is, she did certain research and looked up
22 certain specific things and so she needs to explain the reason
23 why she looks up the reason she looks up. So it's not offered
24 for the truth but it explains why she acted the way she did.

01:25 25 Whether it's true or not, the guy said it. She was told that.

1 MR. BERNHOFT: She's not saying that he said it.

2 THE COURT: She's not saying that he said it.

3 MR. JACOBS: That's what I'm saying. It doesn't
4 matter whether he said it or not, she's saying here's the
01:25 5 information that I was given to cause me to do it.

6 THE COURT: You need to ask the question in such a way
7 that that is clear. Because the way it is coming out, it
8 appears that she is expressing -- she's giving a hearsay
9 statement.

01:26 10 MR. JACOBS: But again, Judge, even if what she says
11 is I was told he believed this, and as a result of being told
12 this, whether he really believed it or believes it or not, it's
13 not offered for the truth.

14 THE COURT: Ask her what she did and why she did it.

01:26 15 MR. JACOBS: And she needs to explain because I was
16 told he believed X, I did research on X.

17 MR. BERNHOFT: That's offered for the truth of the
18 matter asserted.

19 MR. JACOBS: No, it's not. It explains why she does
01:26 20 what she does. Doesn't matter if it's true or not, it only
21 explains her actions. That's not hearsay.

22 THE COURT: I understand that. But she has to be
23 clear that she was acting on the basis of what she was told.

24 MR. JACOBS: Okay.

01:26 25 (End of discussion at side bar.)

1 THE COURT: Ask another question, please.

2 BY MR. JACOBS:

3 Q. Ms. Reese, I think you were saying you did some research.

4 Can you tell me what you researched?

01:27 5 A. Yes. We went on the IRS website and looked at different
6 case studies.

7 THE COURT: One second. Please listen to the
8 question. You said what we did. I want to know -- the question
9 is what did you do. Okay?

01:27 10 THE WITNESS: Oh, sorry.

11 THE COURT: Proceed.

12 THE WITNESS: Okay. So what I did at that point in
13 time was went on the IRS websites and reviewed different case
14 studies relating to the views that my mom had told me that my
01:27 15 uncle was --

16 BY MR. JACOBS:

17 Q. Espoused.

18 A. Yes.

19 Q. You don't know if he said it or not, it's just what you were
01:27 20 told.

21 A. Correct.

22 Q. And based on that you did some research.

23 A. Correct.

24 Q. Okay. Did you print off any written materials?

01:27 25 A. We did print it off, yes.

1 Q. And again, when you say we --

2 A. Sorry, I. Yes. Myself and my mom.

3 Q. Your mom was with you?

4 A. Correct.

01:27 5 Q. Who is at the computer?

6 A. I was.

7 Q. Who is doing the printing?

8 A. I was.

9 Q. She was just with you?

01:27 10 A. Correct.

11 Q. And can you describe just generally the type of materials
12 you printed off.

13 A. They were the case studies where you find if somebody had a
14 particular view such as that paying taxes were unconstitutional.

01:28 15 I found case studies where they already went to court and tried
16 and they lost. So from that I printed it off to try to share
17 with my uncle.

18 Q. Okay. Do you recall any other topics that you printed off
19 materials concerning?

01:28 20 A. To be quite honest, I don't.

21 Q. And what, if anything, did you do with those materials?

22 A. What I wanted to do with them, and what I did do with them,
23 was the next morning I went to New Age to talk to my uncle.

24 Q. Okay. And maybe you mentioned this, at that time where was
01:28 25 New Age Chemical?

1 A. In Delafield, Wisconsin.

2 Q. And did your uncle have an office at New Age Chemical?

3 A. He did.

4 Q. And did you, in fact, meet with your uncle?

01:29 5 A. I did.

6 Q. Now, do you know, does your uncle have any formal education
7 in the areas of accounting or tax law?

8 A. None that I'm aware of, no.

9 Q. And did you, in fact, get to meet with him that day?

01:29 10 A. I did, yes.

11 Q. Where did you meet with him?

12 A. I met with him in his office.

13 Q. Was there anybody else there with you?

14 A. No, it was just him and myself.

01:29 15 Q. And approximately how long did you meet with him?

16 A. I would say roughly about an hour.

17 Q. And can you describe for the jury that meeting, how it
18 transpired?

19 A. Yes. I took the materials to him because I was concerned
01:29 20 just as I had heard from my mom that --

21 MR. BERNHOFT: Objection, unresponsive.

22 BY MR. JACOBS:

23 Q. Just describe the meeting. What happened?

24 A. So from that meeting I provided the documents that I had
01:29 25 printed the night before based on the case laws in which people

1 tried with different views such as taxes were unconstitutional,
2 and that they had lost. And I tried to talk to him about it
3 saying that I was concerned for his viewpoints and what it was
4 going to do to the company.

01:30 5 Q. And did your uncle accept those materials from you?

6 A. He did not.

7 Q. Did he respond to the information that you were giving him?

8 A. He did.

9 Q. What did he say?

01:30 10 A. He got extremely excitable. He would not listen to what I
11 was trying to actually provide to him. And in addition to,
12 stated that I was brainwashed because I had gone to school for
13 accounting.

14 Q. Did he discuss the legality of courts in the United States?

01:30 15 A. He did.

16 Q. What did he say?

17 A. And this is where I can't confer any further from there. It
18 was so outside of what I knew as legal that I don't recollect.

19 Q. Did he indicate whether he was a U.S. citizen?

01:31 20 A. He did state that he was not a U.S. citizen.

21 Q. Did he indicate that he was a sovereign of some other
22 geographic --

23 MR. BERNHOFT: Objection, leading.

24 THE COURT: Sustained.

01:31 25 BY MR. JACOBS:

1 Q. Did he make any other statements concerning his citizenship?

2 A. Yes. He stated that he was the sovereign citizen of the
3 state of Wisconsin, I believe.

01:31 4 Q. And did you make any other efforts during that meeting to
5 convince him of your views?

6 A. I did.

7 Q. What did you do?

8 A. I tried to explain to him that I was concerned that if he
9 went down that route, not only for himself, the company, and
01:31 10 even in the stance of my mom, I didn't want to see --

11 MR. BERNHOFT: Objection, unresponsive.

12 THE COURT: Technically that's not your objection but
13 I will interrupt and ask that another question be asked.

14 BY MR. JACOBS:

01:31 15 Q. Can you describe for me your efforts during the meeting?

16 A. I tried very hard to provide to him the information that I
17 had gotten off the Internet.

18 Q. Did you discuss any possible ramifications of his actions
19 with him?

01:32 20 A. I did.

21 Q. What did you tell him?

22 A. That it could be jail time or penalties.

23 Q. And what did he say?

24 A. He said that he was willing to take that because he was a
01:32 25 martyr and he believed in his views.

1 Q. Did your uncle during that meeting show an interest in your
2 views?

3 A. No.

4 Q. Did he express at least respect for what you were saying?

01:32 5 A. No.

6 Q. How do you know that?

7 A. He did make a comment about the fact that I went to school,
8 that I was brainwashed, in addition to he said that I was
9 stupid.

01:32 10 Q. Can you tell me, you say that meeting lasted about an hour,
11 how did the meeting end?

12 A. Where it ended up was that my mom was going to start to
13 continue to have her payroll taxes withheld from her payroll, in
14 addition to I was going to prepare their tax return.

01:33 15 Q. When you say prepare their tax return, whose tax return?

16 A. New Age Chemical's.

17 Q. And do you know what kind of tax entity New Age Chemical is?

18 A. It was an S Corp.

19 Q. And what does that mean?

01:33 20 A. An S Corp is a corporation that's set up that when the
21 company makes money the income, or loss, would then be divided
22 amongst the owners based on the ownership percentage.

23 Q. So does it have to file tax returns?

24 A. They do, yes.

01:33 25 Q. But does it pay taxes?

1 A. The entity itself, no.

2 Q. And what's the type of return New Age Chemical files?

3 A. An 1120.

01:33

4 Q. And did you, in fact, prepare a tax return for New Age
5 Chemical?

6 A. I did.

7 Q. Do you remember for what period of time that was?

8 A. It was for their fiscal year-end, which is September 30th,
9 2006.

01:34

10 Q. And when would you have prepared that return?

11 A. I prepared it in June of 2007.

12 Q. Let me show you what's been previously admitted into
13 evidence -- at least I believe it has -- as Exhibit 9. If you
14 could just review that, I'm going to ask you a couple of
15 questions.

01:34

16 (Witness peruses document.)

17 MR. JACOBS: Judge, I'm not certain if the display is
18 on for the monitors.

19 BY MR. JACOBS:

01:35

20 Q. Do you recognize what Exhibit 9 is, Ms. Reese?

21 A. I do.

22 Q. What is it?

23 A. It's the 1120S tax return that I filed. Well, they filed.
24 I prepared. Sorry.

01:35

25 Q. I'm sorry?

1 A. I prepared, they filed.

2 Q. Now, I note that there is a signature there for preparer at
3 the bottom and it's blank.

4 A. Correct.

01:35 5 Q. Why is that?

6 A. I was not a paid preparer.

7 Q. And that line is only for paid preparers?

8 A. Correct.

9 Q. And what period of time does this tax return cover?

01:35 10 A. It would be from October 1st, 2005 to September 30th, 2006.

11 Q. You know, I notice the form says 2005 in the upper
12 right-hand corner; do you know why that is?

13 A. Yeah, because it's a fiscal year-end. Well, it has a fiscal
14 year-end of 9/30. And by "fiscal," it's not a calendar year-end
01:36 15 of 12/31. You have to have your tax return filed within 90 days
16 of your year-end, and so their previous year's financial
17 statements would have been the 2004 form. And so in this
18 instance I was preparing the next year, and so I utilized the
19 2005 form.

01:36 20 Q. Okay. And do you know, what did you use to prepare this
21 return?

22 A. Actually, I utilized the software at Vrakas Blum called
23 Ghost Systems.

24 Q. And what did you use for a source of information to complete
01:36 25 the return?

1 A. The source of information I utilized was their previous year
2 tax return, in addition to their fiscal year-end financial
3 statements of 9/30/2006, along with other various work papers
4 that I received from the company.

01:36 5 Q. Okay. And do you know, did the company -- did New Age
6 Chemical make money during this fiscal year ending on September
7 30, 2006?

8 A. They did.

9 Q. And how much did it make?

01:37 10 A. 108,000.

11 Q. Dollars?

12 A. Yes. 107,998.

13 Q. And were individuals -- were there people who were required
14 to report that income and pay taxes on it?

01:37 15 A. Yes, the owners.

16 Q. And who are those owners?

17 A. Jim Stuart and Beverly Schlipp.

18 Q. And do they both have to report the \$108,000?

19 A. No, it's divided amongst their ownership percentage.

01:37 20 Q. And is that reflected somewhere in the return?

21 A. In their K-1s.

22 Q. And what is a K-1?

23 A. A K-1 is attached to the 1120S. That's where it signifies
24 each ownership's percentage of income that's divided amongst
01:37 25 them. And that K-1 is then attached to their personal tax

1 returns or their 1140 that they filed.

2 Q. Is that information reflected in this return somewhere?

3 A. It is.

4 Q. And did you prepare one for both of the owners, your

01:38 5 uncle --

6 THE COURT: One second, please. Would you read back
7 her last answer?

8 (Record read.)

9 BY MR. JACOBS:

01:38 10 Q. 1040?

11 A. 1040, sorry, yes.

12 Q. And do you actually have to attach a K-1 to your 1040?

13 A. You have to report the income that's generated from your
14 K-1.

01:38 15 Q. Like a W-2, when up file your 1040 you put that W-2 on that
16 1040, right?

17 A. Right.

18 Q. The K-1, that goes with the 1120S?

19 A. Correct.

01:39 20 Q. You just take the amounts from it.

21 A. Correct.

22 Q. And did you prepare K-1s both for your uncle and your
23 mother?

24 A. I did.

01:39 25 Q. And if we return to -- I'm not sure what page of Exhibit 9

1 this is.

2 (Brief pause.)

3 BY MR. JACOBS:

01:39

4 Q. There we go. Sorry. There are some highlights on it. Do
5 you recognize that K-1 that's on the monitor?

6 A. Yes.

7 Q. Whose is that?

8 A. That's Beverly Schlipp's.

01:40

9 Q. And what was her share of the income for New Age Chemical
10 for that year?

11 A. Her share was 30 percent. So out of the 107,998, hers was
12 the 32,068.

13 Q. Did she have the report that somewhere?

14 A. She had to report it on her personal income tax return.

01:40

15 Q. And what year would that have been for?

16 A. She would have done that in 2007.

17 Q. For which tax year?

18 A. For 2006.

01:40

19 Q. Okay. And then if we flip through a couple more, is there
20 also a K-1 for your uncle?

21 A. Yes.

22 Q. And how much income was he required to report from New Age
23 Chemical?

24 MR. BERNHOFT: Excuse me, can we clarify who "he" is?

01:40

25 BY MR. JACOBS:

1 Q. Was James Stuart, your uncle, required to report.

2 A. 75,930.

3 Q. And again, what year was he required to report that?

4 A. In 2006.

01:41 5 Q. That's the tax year 2006?

6 A. Yes.

7 Q. Now, what did you do -- when you prepared this return, what
8 did you do with it once you prepared it?

9 A. Once I prepared it I took it to New Age Chemical and
01:41 10 provided it to Beverly Schlipp and James Stuart.

11 Q. Do you know if James Stuart received a copy of this K-1?

12 A. He did.

13 Q. How do you know?

14 A. I handed it to him.

01:41 15 Q. Can I ask, is the K-1 income here, is that the same thing as
16 the salary that an officer of New Age Chemical would be paid?

17 A. Is that the same thing as a salary? No, it's reporting the
18 income that the corporation made for the year.

19 Q. So if an officer of a corporation received compensation
01:42 20 payments they'd have to report that in addition to the
21 corporation's income.

22 A. Correct.

23 Q. And do you know, again, approximately when you would have
24 prepared this return?

01:42 25 A. Well, subsequent to the March meeting with my uncle, it was

1 in-between March and June of 2007. I was working on it.

2 Q. Other than the meeting with your uncle in March of 2007, did
3 you have any additional meetings with him to discuss his views
4 on the tax system?

01:42 5 A. I did, yes.

6 Q. How many other meetings did you have?

7 A. Just one.

8 Q. And do you recall --

9 THE COURT: Counsel, please approach.

01:42 10 (At side bar on the record.)

11 THE COURT: I apologize for interrupting but there are
12 several people who have come in. I want to make sure that they
13 are not witnesses who would be excluded otherwise.

14 MR. JACOBS: I don't know who all of them are.

01:43 15 THE COURT: All right.

16 MR. BERNHOFT: I know Mr. Schlipp is, but he's not a
17 witness. That's his daughter so -- thank you, Judge.

18 THE COURT: All right.

19 (End of discussion at side bar.)

01:43 20 BY MR. JACOBS:

21 Q. Can you tell me, after March of 2007, how many additional
22 meetings did you have with your uncle?

23 A. One.

24 Q. Do you recall approximately when that was?

01:43 25 A. It was sometime between June of 2007 and October 2007.

1 Q. Do you recall where the meeting was?

2 A. In his office.

3 Q. And do you recall, was there anyone at that meeting besides
4 you and your uncle James Stuart?

01:44 5 A. No. At this point in time it was myself, Beverly Schlipp,
6 and Pat Walsh.

7 Q. So that's your mother, Beverly Schlipp?

8 A. My mom is Beverly Schlipp, yeah, and Pat Walsh.

9 Q. And who is Pat Walsh?

01:44 10 A. Pat Walsh was a very close friend to my grandfather and now
11 a dear friend to the family.

12 Q. And when you say your grandfather, do you mean James Stuart,
13 Sr.?

14 A. Correct.

01:44 15 Q. Because you could have a grandfather on the other side,
16 right?

17 A. Correct.

18 Q. And other than a dear friend had Mr. Walsh ever done any
19 work for New Age Chemical?

01:44 20 A. He did.

21 Q. Do you know what kind of work he did?

22 A. He was a tax partner at an accounting firm called Clifton
23 Gunderson, so he handled their tax work.

24 Q. And do you recall how long this meeting was?

01:45 25 A. I would say roughly around an hour.

1 Q. And what was the purpose of the meeting?

2 A. Once again, I had hoped that we could talk to my uncle
3 regarding his views around taxes.

4 Q. And could you describe how the meeting transpired? What
01:45 5 happened?

6 A. Once again, we tried to relay -- myself, my mom Beverly
7 Schlipp, and Pat Walsh -- tried to convey that the views on his
8 taxes were going to get him in trouble. And he did not want to
9 listen to what we had to say.

01:45 10 Q. Well, did he at least appear curious, interested in the
11 information you had?

12 A. No.

13 Q. Did he appear that he didn't understand the Internal Revenue
14 Code and he just wanted more information from the Internal
01:46 15 Revenue Code to help him understand it?

16 A. No.

17 MR. BERNHOFT: Objection.

18 THE COURT: Sustained. The response is stricken.

19 BY MR. JACOBS:

01:46 20 Q. Can you tell me, did he express any opinion about what you
21 were telling him?

22 A. Well, his opinions were he believed that he -- that the
23 taxes were unconstitutional.

24 Q. Could you describe his demeanor during the meeting?

01:46 25 A. It was very similar to the meeting I had with him in March.

1 Q. And how was that?

2 A. Adamant about his views.

3 Q. And did he express any opinion about your views?

01:47 4 A. Once again, it went the same way as it did in March. Just
5 this time there was additional people in the room.

6 Q. And what was that? Did he express any opinion about your
7 views?

8 A. That we were wrong and he was right.

01:47 9 Q. Now, do you know if your uncle is familiar with the
10 Internet?

11 A. Yes, he is.

12 Q. How do you know that?

13 A. He expressed to me that he found his views off the
14 Internet.

01:47 15 Q. Did you -- do you know, the material you tried to give him
16 at your first meeting, did you tell him where you had gotten
17 those materials?

18 A. I did.

19 Q. And where was that?

01:47 20 A. I got it off the Internet.

21 Q. And did you tell your uncle that?

22 A. I did.

23 Q. And did he respond to that?

24 A. The problem was is I got it off the IRS website.

01:47 25 Q. That's what he said?

1 A. Yes.

2 MR. JACOBS: Judge, that's all I have for this
3 witness.

4 THE COURT: Very well. You may cross.

01:48 5 CROSS-EXAMINATION

6 BY MR. BERNHOFT:

7 Q. Good afternoon, Ms. Reese.

8 A. Good afternoon.

9 Q. I'm Bob Bernhoft, I represent your uncle Jim Stuart in this
01:48 10 case.

11 These two meetings -- you testified on direct that the
12 first meeting was just you and your uncle Jim Stuart in-between
13 March and June of 2007; is that correct?

14 A. Correct.

01:48 15 Q. And then the second meeting that you had with your uncle
16 Mr. Stuart was somewhere between June and October of 2007; is
17 that right?

18 A. Correct.

19 Q. I believe you testified on direct, correct me if I'm wrong,
01:49 20 that each of these meetings lasted about one hour.

21 A. Correct.

22 Q. I'm curious, what did you talk about for one hour given your
23 testimony that Mr. Stuart didn't want to listen to what you had
24 to say?

01:49 25 A. He did the majority of the talking.

1 Q. Okay. Now, you've said that -- let me ask you a question.
2 You testified on direct that your goal was to convince your
3 uncle Jim Stuart that his understanding of the Internal Revenue
4 Code was incorrect; is that correct?

01:49 5 A. Correct.

6 Q. And did you understand that your uncle Jim Stuart was taking
7 the position that he didn't have to pay income tax or file tax
8 returns? Is that a fair paraphrase?

9 A. Correct.

01:50 10 Q. And you testified, Ms. Reese, that you received a accounting
11 degree from University of Wisconsin-Milwaukee, was that December
12 of 2000?

13 A. Correct.

14 Q. Did you take some tax courses when you were obtaining your
01:50 15 accounting degree there?

16 A. Yes.

17 Q. All right. Now, let's talk about the first meeting if we
18 can which occurred, according to your testimony, somewhere
19 between March and June of 2007. Did you advise your uncle what
01:50 20 section of the Internal Revenue Code made him liable for the
21 federal income tax?

22 A. From the documents that I had, yes.

23 Q. That's unresponsive to my question. Please listen to my
24 question.

01:50 25 MR. JACOBS: I'm going to object to that, Your Honor.

1 THE COURT: No objection is necessary. Counsel,
2 please ask another question, please.

3 MR. BERNHOFT: Yes.

4 BY MR. BERNHOFT:

01:50 5 Q. At that first meeting that took place between March and June
6 of 2007, did you or did you not advise your uncle what section
7 of the Internal Revenue Code makes him liable for the federal
8 income tax?

9 A. I tried to tell him that he should pay taxes.

01:51 10 Q. Right. Let me rephrase that. At that meeting in March and
11 June of 2007, did you advise your uncle what section of the
12 Internal Revenue Code made him liable for the federal income
13 tax?

14 A. In specifics, I guess not.

01:51 15 Q. Okay. At that meeting between March and June 2000, did you
16 advise your uncle what section of the code or regulation
17 required him to file the Form 1040 personal income return to
18 make a return on income tax?

19 A. No.

01:51 20 Q. At the that meeting between March and June of 2007, did you
21 advise your uncle of what section of the code made -- subjected
22 the money he made from New Age Chemical to withholding taxes?

23 A. No.

24 Q. All right. And if I asked you those same three questions
01:52 25 for this second meeting between June and October of 2007, would

1 your answers be the same?

2 A. And that's why Pat Walsh was there.

3 Q. Let me ask that again. If I asked you those same three
4 questions respecting the second meeting between June and October
01:52 5 of 2007, would your answers be the same?

6 A. Yes, they would be.

7 MR. BERNHOFT: All right, thank you. No further
8 questions.

9 REDIRECT EXAMINATION

01:52 10 BY MR. JACOBS:

11 Q. Ms. Reese, Mr. Bernhoft asked you about what you advised
12 Mr. Stuart, your uncle, at those two meetings. Did the material
13 you had with you provide that information?

14 A. It did.

01:53 15 Q. It provided the statutory authority --

16 MR. BERNHOFT: Objection, Your Honor. There's lack of
17 foundation here.

18 THE COURT: Objection sustained.

19 MR. JACOBS: Could I be heard at side bar?

01:53 20 THE COURT: Yes.

21 (At side bar on the record.)

22 THE COURT: The objection is lack of foundation.

23 MR. JACOBS: She's testifying she printed off the
24 material that had this statutory authority in it and gave it to
01:53 25 him.

1 MR. BERNHOFT: No, she didn't.

2 MR. JACOBS: I asked her that question.

3 MR. BERNHOFT: Her first testimony was that she pulled
4 case studies off the Internal Revenue Service's website where
01:53 5 people had lost. There's no foundation for her suddenly
6 remembering --

7 MR. JACOBS: If you want to cross that's fine. She
8 just said it had it.

9 THE COURT: And she's interpreting --

01:54 10 MR. JACOBS: That's for cross, Judge. She said it's
11 in there.

12 THE COURT: She can testify to what she gave him. But
13 if she's interpreting she's being asked to give more than just
14 provide raw information that she provided -- that she gave to
01:54 15 her uncle. So you can ask her what she gave him.

16 MR. JACOBS: Okay.

17 (End of discussion at side bar.)

18 THE COURT: Ask another question, please.

19 BY MR. JACOBS:

01:54 20 Q. Ms. Reese, do you recall specifically what was in the
21 written material you tried to give your uncle in the March 2007
22 meeting?

23 A. Specifically the details that I obtained from the IRS
24 website included not only -- it included the case laws that I
01:54 25 found based upon his views, and how the results of those cases

1 ended up.

2 Q. So it was primarily case studies.

3 A. Correct.

4 Q. Okay. And did your uncle accept that material from you?

01:55 5 A. He did not.

6 MR. JACOBS: Okay. That's all I have, Judge.

7 MR. BERNHOFT: Nothing on recross, Your Honor.

8 THE COURT: You may step down. Please to not discuss
9 your testimony with anyone unless you're advised this case has
01:55 10 been completed. Have a good afternoon.

11 THE WITNESS: You too.

12 THE COURT: I'll do the best I can.

13 (Witness excused at 1:55 p.m.)

14 MR. JACOBS: Judge, we next would call Patrick Walsh.

01:55 15 THE COURT: If you would like to stretch this may be a
16 good opportunity.

17 MR. JACOBS: Sir, if you could step up to the witness
18 stand and remain standing and be placed under oath.

19 THE REPORTER: Raise your right hand, please.

20 PATRICK WALSH, GOVERNMENT WITNESS, SWORN

21 THE REPORTER: Please state your name and spell your
22 name for the record.

23 THE WITNESS: Patrick W. Walsh, W A L S H.

24 MR. JACOBS: If I could have just a moment, Your
01:57 25 Honor.

1 (Brief pause.)

2 MR. JACOBS: Judge, I wonder if I could have like a
3 five-minute break to run up to my office. I'm missing part of
4 my file.

01:57 5 THE COURT: All right. We'll take the opportunity to
6 relax. Please return to the jury room.

7 THE BAILIFF: All rise.

8 (Jury out at 1:57 p.m.)

9 (Recess taken at 1:58 p.m., until 2:07 p.m.)

02:08 10 (Jury in at 2:08 p.m.)

11 DIRECT EXAMINATION

12 BY MR. JACOBS:

13 Q. I believe you already said your name, Mr. Walsh?

14 A. Yes.

02:08 15 Q. Mr. Walsh, how old are you?

16 A. I'm 74.

17 Q. And where do you currently live, what city?

18 A. In Marco Island, Florida.

19 Q. Do you maintain a home here in Wisconsin as well?

02:08 20 A. Yes, I do.

21 Q. And where is that?

22 A. That's Kohler, Wisconsin.

23 Q. Can you tell me what your educational background is?

24 A. I have a BA degree from Concordia University and an MS
02:08 25 degree from Cardinal Stritch University.

1 Q. And in what area is your undergraduate degree in?

2 A. Accounting.

3 Q. And how about your master's degree?

4 A. That's business management.

02:09 5 Q. And are you a certified public accountant as well?

6 A. Yes, I am.

7 Q. Are you currently employed?

8 A. I'm self-employed on a part-time basis doing tax and
9 business consulting.

02:09 10 Q. When did you move to that status?

11 A. In at the end of 1999.

12 Q. What did you do prior to that?

13 A. I was in public accounting practice all of my career which
14 entails, to date, about 40 years. My last position was as a
02:09 15 managing partner of the Milwaukee office of Clifton Gunderson.

16 Q. And how big is that firm, Clifton Gunderson?

17 A. Clifton Gunderson is a major. It's not the top-tier four
18 firms, but it's beneath that. I think they're ranked as the
19 10th largest U.S. accounting firm.

02:10 20 Q. And approximately how many professionals or accountants
21 would they employ?

22 A. Thousands.

23 Q. Now, in your current part-time employment, is there a
24 business name associated with that?

02:10 25 A. Yes. My wife's -- it's my wife's practice. It's a tax

1 practice, and it's called Brenda K. Walsh and Associate.

2 Q. And has that been the name of the firm since you went to
3 that in 1999?

4 A. No. We were married in 2001, and prior to that it was
02:10 5 called -- with her maiden name it was called Brenda Kippenhen
6 and Associates.

7 Q. Is that K I P P E N H E N?

8 A. Yes.

9 Q. Would you describe the type of work you did when you were
02:11 10 working at Clifton Gunderson?

11 A. Well, I was a manager of the office primarily. Besides that
12 I worked on -- I had a number of clients that I served, as the
13 other CPAs in the firms did, which would include -- my area of
14 expertise was primarily in tax work, but I was the partner in
02:11 15 charge of audits as well as other accounting services and tax
16 work, preparation of business tax returns.

17 Q. In connection with that employment do you know an individual
18 named James A. Stuart, Jr.?

19 A. Yes, I do.

02:11 20 Q. And how long have you known Mr. Stuart? That Mr. Stuart.

21 A. Oh, I would say going back to 1980.

22 Q. And do you see him here today?

23 A. Yes, he's here.

24 Q. Could you just identify him by where he's seated and what
02:12 25 he's wearing?

1 A. He's got a blue jacket on with a tie and a white shirt and
2 he's on the end of the second table there.

3 Q. That is the left-hand side?

4 A. Yes.

02:12 5 MR. JACOBS: Judge, I'd ask the record reflect he has
6 identified the defendant James Stuart.

7 THE COURT: Noted.

8 BY MR. JACOBS:

9 Q. Do you recall how you first came to know Mr. Stuart?

02:12 10 A. Well, I first came to know his father James Stuart, Sr.

11 Q. And how did you come to know his father?

12 A. I met him through a bank. I lived in Fredonia, Wisconsin at
13 the time, and he also lived in Fredonia, and he was referred --
14 or I was referred to senior Stuart by the banker. And I think
02:13 15 that was in the late '70s or perhaps '80. And he wanted to --
16 he asked my advice on tax and business operations that he was
17 involved in. And through him I met his son Jim Stuart, who is
18 present here.

19 Q. And did there ever come a time that you had a professional
02:13 20 relationship with James Stuart, Jr.?

21 A. Well, I did his personal income tax return, and he was
22 involved with business activities with his father, but I'm not
23 real certain when I started. But I did -- for many years I did
24 Jim Stuart, Jr.'s Individual Income Tax Return. And later on
02:14 25 they incorporated a business and both of the Stuarts were owners

1 of the business and I did the tax work and business advising for
2 them and their corporation. That began in 1985.

3 Q. What was the name of the corporation that you started doing
4 work for in 1985?

02:14 5 A. S & S Industrial Services, Incorporated.

6 Q. Do you recall where that was located?

7 A. Pardon?

8 Q. Where was that located?

9 A. It was in Milwaukee -- I think in Waukesha.

02:14 10 Q. And who were the owners of that business?

11 A. Jim Stuart, Sr. and Jim Stuart, Jr., and Jim Stuart, Jr.'s
12 sister Beverly.

13 Q. And is that Beverly Schlipp?

14 A. Yes.

02:14 15 Q. Okay. Did that business change names at some point?

16 A. Yes, it did.

17 Q. And when was that, do you recall?

18 A. I believe it was around 1998, they changed the name to New
19 Age Chemical. The same corporate entity, just a name change.

02:15 20 Q. And do you recall, was it still located in Milwaukee in
21 1998?

22 A. In 1998, they moved from their -- where they had been -- I
23 think they had been in a couple of places in Waukesha or
24 Milwaukee, and in '98 they moved to a new building in Delafield
02:15 25 that they had built. And I believe they moved in there towards

1 the end of 1998.

2 Q. And when they moved into the Delafield location do you know
3 who the owners of the business were?

4 A. The owners of the business were still the same. Jim Stuart,
02:16 5 Sr. owned a majority control and Jim Stuart, Jr. had a
6 significant amount, like 20 percent or so, and Beverly Schlipp
7 had maybe 3 percent, something like that.

8 Q. And do you know what kind of business it was? Can you
9 describe what they made?

02:16 10 A. Yeah, they did manufacture metal working fluids for
11 industry. For example, Mercury Marine in Fond du Lac where they
12 manufactured watercraft engines, when they machined the parts
13 that go in there they need some coolant or a lubricant that they
14 kind of squirt on the metal as it's being machined and it keeps
02:16 15 it from burning up and keeps it in tolerances.

16 Q. And do you know approximately how many employees the
17 business had when you were involved with it?

18 A. I don't remember. I'm sure it varied from time to time. I
19 would say half a dozen.

02:17 20 Q. Now, after the business moved to Delafield did there ever
21 come a time when the ownership interests changed from what you
22 described?

23 A. Yes.

24 Q. When was that?

02:17 25 A. In 1997 the senior Jim Stuart passed away. I think it was

1 in December of 1997. And also, just coincidentally, in I
2 believe it was April of 1997, they changed the -- it was a
3 regular C Corporation, which means the corporation does its own
4 reporting and pays its own taxes. In April of 1997, they
02:18 5 elected to become an S Corp which means that then the taxes are
6 paid by the owners. It's more like a partnership. And so
7 beginning then in 1997, they were acting as a partnership and,
8 again, the individuals pay the tax.

9 So, I say that because you asked when the change in
02:18 10 ownership. The change of ownership, senior died then, after
11 that, Jim -- James Stuart, Jr. and Beverly Schlipp were the main
12 officers of the company. The father was gone. And the widow,
13 Wanda, was a majority owner of the business.

14 And after, from '97 to 2003, during that period of
02:18 15 time there was a lot of negotiations, and discussion I should
16 say, and in negotiation as to whether that should continue that
17 way because the two children, if I may call them that, were
18 operating the business and the mother Wanda really had nothing
19 to do with the business, whereas when the father James Stuart,
02:19 20 Jr. -- or Sr. was there, he actually participated in the
21 business.

22 And so in 2003, Wanda sold and transferred her
23 ownership to Jim, Jr. and Beverly, and she transferred in not
24 equal amounts to them but in amounts so that Beverly had 30
02:19 25 percent and Jim had 70 percent. That was in the year 2003.

1 Q. All right. Now, throughout this time were you providing
2 financial services to New Age Chemical?

3 A. Yes.

4 Q. Can you describe the services that you were providing.

02:19 5 A. It was business and tax advice to them, as well as doing or
6 supervising the preparation of their income tax returns, their
7 individual returns as well as the corporate tax return.

8 Q. And when you say individual tax returns, for whom did you or
9 your firm prepare individual tax returns?

02:20 10 A. For the widow Wanda, and for Beverly, and for Jim, Jr., and
11 the corporation.

12 Q. And did you have any other position with respect to New Age
13 Chemical during this time?

14 A. Late in the '90s Jim Stuart, Sr., I would say in the middle
02:20 15 '90s, he was ill. He was ill probably the last 8 or 10 years of
16 his life, and much of it he spent at home. Earlier he would
17 continue to get out, but mostly towards the end a number of
18 years before he died he was immobile. And he would frequently
19 call me and ask me to come over to his house, and he wanted to
02:21 20 discuss business, how things were going. He would review what
21 was happening and he wanted me to know certain things.

22 And he was kind of preparing. I'm sure he felt and
23 knew that he was going to die. And so he asked if I would be
24 willing to be on the board of directors of New Age, the purpose
02:21 25 being, of course, that he -- then I would be kind of engaged to

1 continue to give business advice to them. And, in addition to
2 that, he asked if I would be willing to be -- to assist and
3 advise his wife in the event of his death or incapacity, and I
4 also agreed to do that. That was done towards the middle of the
5 '90s.

6 Q. And for how long were you on the board of directors of New
7 Age Chemical?

8 A. I would estimate or guess that it was probably about three
9 years. Two or three years. And it ended pretty much within a
10 few months -- probably within six months after senior Stuart
11 died.

12 Q. I believe you indicated you prepared personal tax returns
13 for James Stuart, Jr.?

14 A. Yes.

15 Q. And do you know when you started doing that?

16 A. I don't remember exactly, but I believe it started shortly I
17 would say around 1990.

18 Q. And are you still doing that?

19 A. No. I'm not.

20 Q. Do you know the last tax year for which you prepared
21 personal tax returns for Mr. Stuart?

22 A. Yes, 2004.

23 Q. And I believe you indicated you or your firm prepared the
24 corporate tax returns for New Age Chemical, and when did that
25 start?

1 A. In 1985.

2 Q. And are you still preparing those tax returns?

3 A. The corporate return, no.

4 Q. Do you know when that stopped?

02:23 5 A. In 2004, I believe. No, no. The corporate return -- when I
6 was at Clifton Gunderson, and I left at the end of 1999, they
7 continued to do the tax return, the firm, and I was not directly
8 involved in the preparation of the tax return after 1999.

9 However, I went in to -- as I had done when I was with
02:24 10 Clifton, I went in and helped Beverly -- she was controller, or
11 the accountant there -- and I would go in and help her get it
12 organized and put it into the order that was necessary for
13 Clifton Gunderson to prepare the return. And I believe they
14 prepared the return for 2000, 2001 and 2002 and 2003.

02:24 15 Q. All right. You mentioned you left Clifton Gunderson in
16 1999, did you continue to visit New Age Chemical after leaving
17 Clifton Gunderson?

18 A. Yes, I did.

19 Q. And can you tell me, how frequently would you visit New Age
02:25 20 Chemical?

21 A. Well, I would say probably 8 or 10 times in a year. I had
22 made a commitment to Jim Stuart, Sr. that I would kind of
23 continue to advise them and to help them, and I tried to do
24 that. Whether they had a problem or not, I would go visit them.

02:25 25 Q. And for how long did you continue to visit New Age Chemical

1 in that capacity?

2 A. I continued that -- it was more earlier on, around 2001, 2,
3 and 3 and 4 and so on. But then after 2004, it diminished a
4 little bit. But I think -- I believe I still was in there a
02:25 5 number of times. And it continued to diminish so that I don't
6 believe -- I don't remember being there at all in the last three
7 years. But up through 2008, I was in there quite often.

8 Q. When you say "quite often," approximately?

9 A. Probably six or eight times in a year.

02:26 10 Q. And focusing on the period from 2003 to 2008, what were the
11 reasons for you visiting New Age Chemical?

12 A. Well, in 2004 was the last return prepared. His personal
13 returns were prepared by myself and my wife as Brenda K. Walsh
14 and Associates.

02:26 15 Q. That is James Stuart's personal return?

16 A. Yes.

17 Q. I see.

18 A. That would have been the 2001, 2, 3 and 4. After 4 I told
19 Jim Stuart, Jr. that we no longer could prepare his returns
02:26 20 because he was insisting on doing things that I believed were
21 unlawful, and we could not have any part of that.

22 And I had many conversations with him with regard to
23 that, and trying to convince him that what he was proposing
24 would be wrong, unlawful, and actually fraudulent. And I told
02:27 25 him that fraud was not only -- you eventually would have to pay

1 the tax, but the penalties were severe, very severe, and it also
2 means prison. And I didn't want any part of it.

3 And so I -- he insisted, he was adamant that he was
4 going to do what he was going to do, and I told him that I
02:27 5 couldn't do that. But I had made a commitment to his father
6 that I would continue to try to see that they did well and that
7 they would abide by the law. Not that his father was suggesting
8 that they wouldn't. There was never any conversation of that
9 manner.

02:28 10 But I felt I had a commitment to try to help them.
11 And also, Beverly, his sister, wasn't of the same mind, and I
12 would go there to try to help her to do as best she could, you
13 know, under the circumstances.

14 And Jim was very friendly with me and he did challenge
02:28 15 me. He asked me to prove, you know, that he had to pay taxes.
16 And at one time I did offer to him my Master Tax Guide, which I
17 said was my authority. And, of course, the Master Tax Guide is
18 an abbreviation and kind of a understanding of the IRS code.
19 And I also said that if he needed more than that he could go on
02:29 20 the Internet and read the code.

21 He insisted that that isn't what he was going by. He
22 was going by the Constitution, and the Constitution provided --
23 or did not provide that there was any right of the government to
24 be taxing people.

02:29 25 And my discussions with him in 2005 and 6 and 7, if he

1 was there when I came there -- and most of the time he was -- we'd
2 discuss that and he was adamant in his position.

3 Q. Can you tell me, during this period of time did Beverly
4 Schlipp work at New Age Chemical?

02:29 5 A. Yes, she did.

6 Q. What was her position?

7 A. She was the controller throughout the whole period of time.

8 Q. And Jim's position, Mr. Stuart's position, what was that?

9 A. He was president.

02:29 10 Q. Were there any other officers of the New Age Chemical during
11 this time?

12 A. Not to my knowledge.

13 Q. And do you know during the time you were preparing
14 Mr. Stuart's personal tax returns during that 2002, 2003, 2004,
02:30 15 do you know what his sources of income were?

16 A. I think it was primarily New Age Chemical. In addition to
17 that, he and Beverly owned the building that they were housed.
18 And that was a 50/50. And that's a partnership. And so he had
19 rent coming from New Age. The building was called Chem-Lease.
02:30 20 So he had rental income in addition to his salary.

21 There were a couple of ventures that he embarked on
22 with some other outside people during that period of time, and I
23 don't -- I was not involved in that so I really don't know
24 precisely what they were but I understand there was some income
02:31 25 from that. I would say the majority of it was all New Age

1 Chemical.

2 Q. Let me show you what have been marked for identification as
3 Exhibits 125, 126, and 128.

4 (Exhibits handed to the witness.)

02:32 5 BY MR. JACOBS:

6 Q. Mr. Walsh, do you recognize what those three exhibits are?

7 A. Yes, I do.

8 Q. Could you describe generically what are they?

9 A. They're -- these are our work papers. They're copies of Jim
02:33 10 Stuart, Jr.'s Individual Income Tax Return for the year 2002,
11 2003, and 2004. And in addition to the tax return itself, it's
12 an organizer that we would have sent to him to kind of organize
13 his data before we would do the return. And also some work
14 papers that we would have put together in order to summarize
02:33 15 and/or organize the data to prepare the tax returns. The tax
16 returns and our work papers.

17 Q. Where does the information come from that you used to
18 prepare those tax returns?

19 A. It came from Jim Stuart.

02:33 20 MR. JACOBS: Your Honor, I move into evidence Exhibits
21 125, 126, and 128.

22 MR. BERNHOFT: No objection, Your Honor.

23 THE COURT: Received.

24 (Exhibits 25, 26 and 28 offered and received.)

02:33 25 BY MR. JACOBS:

1 Q. And in preparing -- were you actually the person dealing
2 with Mr. Stuart in preparing those tax returns?

3 A. Yes.

4 Q. And if you could just tell me, what types of income are
5 reported for Mr. Stuart on those three tax returns?

6 A. Sure. Salary.

7 Q. And do you know where he got that salary?

8 A. Yes, I can tell you.

9 (Witness peruses documents.)

10 A. On 2002, and I'm sure it's pretty much the same on all of
11 them, it's salary, salary, wages from New Age Chemical.

12 BY MR. JACOBS:

13 Q. Okay. Are there any other sources of income that Mr. Stuart
14 reported for those three tax years?

15 A. Yeah, there's some small amount of dividends and interest.
16 And there is -- have to bear with me here, okay?

17 He had rental income from Chem-Lease. And he had his
18 share of the earnings other than salary from New Age Chemical.
19 Being that the corporation now is a partnership, taxes as a
20 partnership, he had salaries and then the profit after the
21 salaries from the corporation, he would have his 70 percent
22 share of that.

23 Q. Okay.

24 A. And he had that amount in there too. That was 126,000. And
25 then React Corp., which was one of these outside activities that

1 I don't really know a whole lot about, it was \$6600.

2 Q. And can you tell me, are those the sorts of income that
3 Mr. Stuart had in the years 2003 and 2004?

4 A. I can look. I believe they would be the same. Salary.

02:36 5 Well, and in 2003 he had another source. 2003 he showed a loss
6 of 80,000 from the partnership of this React Corporation, but he
7 also had -- I think he sold React. Here it is. His interest in
8 this outside venture called React was sold, and he had a gain,
9 about 200,000, \$205,000. So that was a little different in '03.

02:38 10 In '04, '04 it was pretty much just New Age Chemical
11 and the rental. New Age Chemical salary and the rental and the
12 New Age -- in 2004 it looks like there was a loss on the New Age
13 Chemical partnership part.

14 BY MR. JACOBS:

02:38 15 Q. And is the 2004 return the last personal tax return you
16 prepared for Mr. Stuart?

17 A. Yes, it is.

18 Q. And for those returns, were those filed, and did Mr. Stuart
19 pay the tax he owed for each of those years?

02:38 20 A. Excuse me?

21 Q. Were those tax returns filed and did Mr. Stuart pay the
22 taxes he owed for those years?

23 A. Yes, I believe so.

24 Q. I want to show you a couple of documents from those work
02:38 25 papers. First I want to show you what's been marked as

1 Exhibit 127. It's a page from Exhibit Number 126. Do you
2 recognize that document, Mr. Walsh?

3 A. Yes. It's -- that's a K-1 which is a form that comes along
4 with a partnership. And it shows his -- this was that entity
02:39 5 that I didn't have anything to do with. It was a side venture
6 that he was involved in, he was a 50 percent owner in it. It
7 was a corporation called React Corporation, and it showed that
8 he had a loss from operations of 80,000.

9 And if you remember I just said, on the return -- I'm
02:40 10 digressing a little -- he also had a \$205,000 gain from the sale
11 of the business. So he sold out his interest in it. But the
12 operating loss was 80, so that offset the 205,000 gain that he
13 had.

14 You asked me about this note that's on here?

02:40 15 Q. Yeah, there's a sticky note there. Do you know whose
16 handwriting that is?

17 A. Yeah, that's Jim Stuart, Jr.'s.

18 Q. And do you know when you would have received this note from
19 Mr. Stuart?

02:40 20 A. This is for the 2003 return. His personal return for 2003.
21 So I would have received that sometime in the spring of 2004.

22 Q. Okay. See if I can -- can you read that note to the jury,
23 Mr. Walsh?

24 A. Sure. It's addressed to me, Pat. It says:

02:41 25 "Info for taxes. The React K-1 form will change. Be

1 as creative as you want here and get my tax bill as low as
2 possible. Thanks, Jim."

3 Q. And did you do that, were you creative in getting his tax
4 bill as low as possible?

02:41 5 A. Well, I used -- the only thing I can do is -- this is
6 upside-down here -- I used the K-1, and that's my authority. A
7 K-1 is like a W-2 for a business. And what I did is the amounts
8 that are on here is what I used on his tax return. I can't use
9 anything else because if I use something else it will bounce
02:41 10 back from the Internal Revenue Service.

11 Q. And so this would have been for the return filed for the tax
12 year 2003?

13 A. Yes.

14 Q. And when would that have been filed?

02:42 15 A. By April 15th of 2004.

16 Q. Okay. And then let me show you what's been marked for
17 identification as Exhibit 129. This is a page from Exhibit 128.
18 Do you recognize that document, Mr. Walsh?

19 A. Yes, I do.

02:42 20 Q. This is a typed note. Do you know the source or who wrote
21 this note?

22 MR. BERNHOFT: I'm sorry, Your Honor, is this
23 admitted?

24 MR. JACOBS: Well, it is. It's in 128. So it is. I
02:42 25 can move to have it separately admitted, but it's already

1 admitted in Exhibit 128.

2 MR. BERNHOFT: Could I approach?

3 THE COURT: Approach.

4 (At side bar on the record.)

02:43 5 (Discussion off the record.)

6 THE COURT: We're on the record. Go ahead.

7 MR. BERNHOFT: I did not note that this wasn't there
8 and, if it wasn't there, I don't know why it's here.

9 THE COURT: That's 129.

02:43 10 MR. BERNHOFT: Right.

11 MR. JACOBS: It's a page out of 128. It's a page out
12 of here because it's easier than have him flip through the
13 entire return. If you see the work papers, it's in here.

14 MR. BERNHOFT: 000305.

02:44 15 THE COURT: Bates number? All right.

16 MR. BERNHOFT: I didn't intend to not object to this.
17 Authenticity.

18 THE COURT: Just want to check our logistics in terms
19 of our day. What other witnesses do you have?

02:45 20 MR. JACOBS: Well, I may have to take a break on this
21 next one to find out, Judge. Our pacing has been hard to
22 predict, to be honest with you. I've asked two other witnesses
23 to get down here and have them available. I didn't expect --
24 the pace has been unpredictable. We could have two other
02:45 25 witnesses here.

1 THE COURT: And will that end your case in chief?

2 MR. JACOBS: No. There's still two more agents after
3 that.

4 THE COURT: So how much time do you anticipate?

02:45 5 MR. JACOBS: I would say the next -- the next two
6 witnesses could be an hour.

7 THE COURT: So you think you can finish today?

8 MR. JACOBS: No, I wouldn't think so, only because
9 there's four witnesses. Assuming I can get them here. I mean,
02:45 10 I don't know about cross, but I would hope two IRS agents in the
11 morning and we'll be done.

12 THE COURT: So you'll go until 6:00, correct?

13 MR. JACOBS: I wasn't really planning on going till
14 6:00. If I need to I will.

02:46 15 THE COURT: If your witnesses are available -- if you
16 think you can get things done quickly tomorrow morning then we
17 will end about 5:30?

18 MR. JACOBS: Okay.

19 MR. BERNHOFT: I have no problem. I mean, I expect
02:46 20 light or no cross on the revenue witness. I expect 5, 10, 15
21 minutes on Rech. On Nettesheim, 5, 10 minutes. On Mr. Walsh,
22 maybe 10 minutes, 15 minutes. That's my best estimate from what
23 I see in the docs.

24 THE COURT: Part of the reason I'm asking is I do have
02:46 25 some other cases on tomorrow and I haven't -- I have a hearing

1 at 12:00 o'clock tomorrow. So that's why I'd like to get as
2 much done today as possible.

3 MR. JACOBS: All right. Can we take an afternoon
4 break after he's done? And then I'll see whose here. We'll
02:47 5 call the people and say get down here, we're moving quickly.

6 THE COURT: Okay. Because I have to notify security
7 about going outdoors and so forth. All right, very well.

8 (End of discussion at side bar.)

9 BY MR. JACOBS:

02:47 10 Q. Mr. Walsh, do you recognize Exhibit 129?

11 A. Yes, I do.

12 THE COURT: We're gonna go back to 128.

13 MR. JACOBS: Oh, I misunderstood.

14 THE COURT: 128.

02:47 15 BY MR. JACOBS:

16 Q. Can you -- bear with me one second.

17 THE COURT: Can you pull that up, 128?

18 (Brief pause.)

19 BY MR. JACOBS:

02:49 20 Q. Mr. Walsh, turning your attention to the tabbed page in
21 Exhibit 128, do you recognize that typed note?

22 A. Yes, I do.

23 Q. Who is that from?

24 A. Jim Stuart, Jr.

02:49 25 Q. And do you know when you would have received this note?

1 A. It was for his 2004 income tax return, so probably was in
2 the spring of 2005.

3 Q. And can you read the first paragraph to me?

4 A. Sure. It's addressed to me.

02:50 5 "Here is all my stuff for the 2004 taxes. I remember
6 last year how I got caught up in the AMT tax and the whole thing
7 makes me furious. See what you can do about my not getting
8 caught up in it this year. I want to take every deduction you
9 can think of and will take my chances on an audit."

02:50 10 Q. Now, in that note Mr. Stuart references the AMT, what is
11 that?

12 A. That's alternative minimum tax.

13 Q. And can you easily explain what that means?

14 A. Sure. You compute the tax or prepare the return as normal
02:50 15 according to the tax law, and then you have to do it a second
16 time by eliminating certain things and see whether it comes out
17 to more than it did on the first go-through. And if it comes
18 out the more, then you use the higher.

19 And what happens typically, sometimes deductions are
02:51 20 eliminated on the second go-through and it frequently, if your
21 income gets high enough as Jim Stuart junior's did get high
22 enough, it results in a higher tax.

23 Q. And did that happen to Mr. Stuart for the 2003 tax year? I
24 guess that was the --

02:51 25 A. Yes, it did.

1 Q. Now, this was for the 2004 tax year, did you prepare any
2 personal tax returns for him after this?

3 A. No, I did not.

4 Q. Did you end up in any disputes with Mr. Stuart about taxes?

02:51 5 A. Yes, I did. He was insisting on not reporting. He did not
6 want his income to go on the W-2 anymore. And he did not want
7 any withholding -- income tax withheld anymore. And I told him
8 that was wrong, you can't do that. And he also wanted -- when
9 the corporate return was prepared, he did not want K-1s to be
02:52 10 part of the return or he didn't want his K-1 in there, which is
11 the second source of income from New Age Chemical.

12 I told him if he wanted to do that -- that goes back
13 to what we talked about earlier. I told him I cannot do that;
14 that that's what the law says you have to do: you have to have
02:52 15 W-2 wages and you have to have withholding on it. And he
16 disputed that. And we had discussions of that. And also, you
17 have to have a K-1 because that's the type of entity you are,
18 and you have to report the profit after all expenses on that and
19 he gets his share of it and we have to prepare that.

02:53 20 He disagreed and he didn't want to do that.

21 Q. Can you tell me when that started, when that dispute that
22 you've described?

23 A. Well, that happened right after the 2004 tax return was
24 prepared. And I told him that I would not be able to do returns
02:53 25 for him, and I was sure that Clifton Gunderson was not going to

1 want to do the corporate return anymore either.

2 Q. Did you ever suggest to Mr. Stuart that his points of view
3 were correct?

4 MR. BERNHOFT: Objection, leading.

02:53 5 THE COURT: Sustained.

6 BY MR. JACOBS:

7 Q. Let me rephrase the question. Can you tell me, do you
8 recall telling Mr. Stuart anything specifically about his views?

9 A. Well, I told him that -- I did mention this earlier, but I
02:54 10 told him that what he was trying to do, or he was attempting to
11 do, or telling me he wanted to do, and also dictating in the
12 office that that's the way it was going to be done, was
13 unlawful, it was fraudulent, and that he was taking risks way
14 beyond what he wanted to do, what he should be doing. And I
02:54 15 told him I wouldn't do that, take those kind of risks, again,
16 because the penalties are so severe and it is so blatant that
17 there's no way that he was going to get away with it.

18 Q. You told him all that?

19 A. Yes, I did.

02:54 20 Q. When you were telling him that, was that in person, over the
21 phone? How were you communicating?

22 A. That was face-to-face. And I told him that more than once.
23 This would be in times after when I did not prepare returns
24 anymore when I would go back, we had similar discussions, that
02:55 25 you can't do that.

1 I, under normal circumstances -- I've had that happen
2 to me before with other clients, and I tell you that --

3 THE COURT: Hold on one second.

4 Ask another question, please.

02:55 5 BY MR. JACOBS:

6 Q. All right. Let me ask you, did you ever have any e-mail
7 correspondence with Mr. Stuart?

8 A. Yes, I did.

9 Q. Okay. And I'd like to show you what's been marked for
02:55 10 identification as Exhibit 113. Mr. Walsh, do you recognize what
11 Exhibit 113 is?

12 A. Yes, I do.

13 Q. And what is that?

14 A. That's an e-mail from Jim Stuart, Jr. to me.

02:56 15 Q. And what's the date of that e-mail?

16 A. March 24th of 2006.

17 MR. JACOBS: Your Honor, I'd move into evidence
18 Exhibit 113.

19 THE COURT: Is there any objection?

02:56 20 MR. BERNHOFT: None.

21 THE COURT: Received.

22 (Exhibit 113 offered and received.)

23 BY MR. JACOBS:

24 Q. And can I ask, how many pages are in that document?

02:56 25 A. Nine I think it says on top.

1 Q. And I'd like to just have you read the body of the --

2 You have to stay within the white. Now go right.

3 A. Excuse me?

4 Q. I'm sorry, I'm watching the agent. He's trying to -- I'm

02:57 5 trying to get him to enlarge it.

6 I want you, if you could, read the text of the e-mail.

7 Can you read that?

8 A. Sure. It's addressed to me.

9 "I want to thank you for taking the time to come and

02:57 10 talk with me today. Unfortunately, on this subject, we do not

11 agree. I am adamant in stating that I will not be subjected,

12 willingly, to the tyranny imposed upon me be" -- I think it

13 meant "by" -- "the federal income tax system. I am not just

14 sitting here doing nothing, hoping the ax doesn't fall, either.

02:58 15 I am becoming educated in the subject.

16 "Below is a portion from the book that has started

17 this off. As we discussed, although you think I am subjecting

18 the company to some undue hardship, in reality, the company

19 itself can be subject to severe penalty from its employees.

02:58 20 Also attached is another excerpt describing this, as well as a

21 few things. The last excerpt, however, describes how New Age is

22 liable. Now, with this in mind, how is one to proceed?"

23 Signed, "Jim."

24 Q. And I gather there's some additional material that came with

02:58 25 that e-mail?

1 A. Yes.

2 Q. Did you ever provide any material to Mr. Stuart?

3 A. Regarding the tax? Yes. In discussion before this I
4 offered to him a copy of my Master Tax Guide.

02:59 5 Q. Did he accept that?

6 A. No. And also I suggested that he could look up on the
7 Internet the Internal Revenue Code. And he referred me to a
8 book called Cracking the Code. And attached to, after his
9 e-mail to me, he's got reprinted some excerpts from the book
02:59 10 Cracking the Code, which is a book that -- I don't know if I
11 know how to describe it -- I don't agree with it.

12 Q. That's all right. Are you familiar with it?

13 A. Yes.

14 Q. Do you know who wrote it?

02:59 15 A. Hendrickson, I believe. I do know it because at a later
16 date I have had throughout this whole time, and currently I
17 have, a very good, friendly relationship with his mother whom I
18 agreed to continue to advise after the death of her husband.

19 MR. BERNHOFT: Your Honor, I'd like to see a few
03:00 20 questions here if we could, please.

21 THE COURT: Certainly. Yes.

22 BY MR. JACOBS:

23 Q. So you're familiar with Cracking the Code?

24 A. Yes.

03:00 25 Q. And do you know, is Mr. Hendrickson a recognized tax expert?

1 A. No, they're not. No, he's not.

2 Q. And I'd like to show you what's been marked as Exhibit 115.
3 Do you recognize what that exhibit is?

4 A. Yes, I do.

03:01 5 Q. Did you provide this to Mr. Stuart?

6 A. Yes, I did.

7 Q. Do you know approximately when you would have provided this
8 to him?

9 A. Its publication was April of 2006, so I would -- I'm sure it
03:01 10 was done -- I gave it to him in 2006.

11 MR. JACOBS: Your Honor, I'd move into evidence
12 Exhibit 115.

13 THE COURT: It's received.

14 (Exhibit 115 offered and received.)

03:01 15 BY MR. JACOBS:

16 Q. And Mr. Walsh, what is Exhibit 115?

17 A. It's a publication by the American Institute of CPAs and
18 it's for members in the local and small accounting firms. And
19 it's an annual thing that they do, and it is called the IRS 2006
03:01 20 Dirty Dozen. And it's a listing of the dozen illegal schemes.

21 THE COURT: One second. Please approach.

22 (At side bar on the record.)

23 THE COURT: I'm curious about this exhibit and whether
24 or not this will raise any problems. He's talking about general
03:02 25 illegal schemes.

1 MR. JACOBS: It's specific. It identifies specific
2 things and he gives it to Stuart and says look, the IRS has
3 identified these as illegal tax fraud schemes.

4 MR. BERNHOFT: This does not say that these are
03:03 5 illegal tax fraud schemes. He's interpreting it that way.

6 THE COURT: That's why I'm concerned.

7 MR. JACOBS: Well, can you possibly cover that in
8 cross-examination or something? It's an adversarial system.

9 THE COURT: But he can testify to what he gave him. I
03:03 10 am concerned that he is interpreting this and talking about
11 what's legal and what's illegal. That's what I'm concerned
12 about.

13 MR. JACOBS: Okay. I'll have him stick closer to the
14 text of the document.

03:03 15 THE COURT: I'd also like to talk with the parties
16 after. Has your witness gone back to Utah or is she still here?

17 MR. JACOBS: No, she's flown back.

18 THE COURT: Has she already left?

19 MR. JACOBS: I believe so.

03:03 20 THE COURT: Okay. Thank you.

21 (End of discussion at side bar.)

22 THE COURT: Ask another question, please.

23 MR. JACOBS: Sure.

24 BY MR. JACOBS:

03:04 25 Q. Mr. Walsh, I gather you provided this to Mr. Stuart?

1 A. Yes, I did.

2 Q. And I just -- there are a couple of sections that have been
3 highlighted. I wonder if you could just -- hold on. Let me
4 back up just a second. What is the AICPA?

03:04 5 A. That's American Institute of CPAs. It's a national
6 organization for CPAs. Professional organization.

7 Q. And I'd just like to highlight the yellow portions and
8 enlarge those, just the yellow portions.

9 Can you read what that says on the document?

03:04 10 A. "Zero wages. In this scam, a taxpayer attaches to his or
11 her return either a Form 4852, which is a substitute W-2, or a
12 corrected form 1099 that shows zero or little wages or other
13 income. The taxpayer may include a statement saying that he or
14 she is rebutting information submitted to the IRS by the payer."

03:05 15 Q. And does that continue at the top?

16 A. Yeah. "An explanation on Form 4852 may cite statutory
17 language behind Internal Revenue Code 3401 and 3121, or may
18 include some reference to the paying company's refusal to issue
19 a corrected Form W-2 for fear of IRS retaliation. The Form 4852
03:05 20 or 1099 is usually attached to a zero return."

21 Q. That's all right. I just wanted that portion of it.

22 A. Okay.

23 Q. Now, other than providing material to Mr. Stuart, did you
24 have any meetings with him in an attempt to convince him of your
03:06 25 point of view?

1 A. Yes, I did.

2 Q. And do you recall when those meetings began?

3 A. They began in I believe 2003, 2004, and continued.

4 Q. And for how long did they continue?

03:06 5 A. To approximately 2009.

6 Q. Could you describe Mr. Stuart's demeanor during those
7 meetings?

8 MR. BERNHOFT: Objection, Your Honor. We're talking
9 about an unspecified number of meetings over six years.

03:07 10 THE COURT: Objection sustained.

11 BY MR. JACOBS:

12 Q. Do you recall meeting with him with Allison Reese?

13 A. Yes, I do.

14 Q. Do you recall when that meeting was?

03:07 15 A. I think it was in 2007.

16 Q. Do you recall where that meeting was?

17 A. At the business place. In Delafield.

18 Q. And do you recall what you told Mr. Stuart at that meeting?

03:07 19 A. Yes. I told him his activity was fraudulent and that he was
20 ruining -- was going to ruin the business and he was going to
21 ruin his sister's livelihood in retirement and his mother's
22 deferred compensation and, of course, his own, because it wasn't
23 going to continue, he wouldn't be able to get away with it.

24 Q. Did Mr. Stuart respond to your statements?

03:08 25 A. Yes. He told me I was wrong and that I -- and he was right,

1 regardless of what I said. He really didn't want to listen to
2 my point of view. He said accountants like me and lawyers
3 are -- feed off of compliance work on businesses and
4 individuals, and we all really knew deep down that it was wrong
03:08 5 and it was not necessary to pay taxes and that -- but we just
6 keep our mouths shut and don't say anything because we're living
7 off of the compliance.

8 Q. Now, do you know if Mr. Stuart is familiar with the
9 Internet?

03:08 10 A. Yes, he is.

11 Q. How do you know that?

12 A. Well, because when I would go to the business for my
13 meetings or for helping to do Beverly with the work, he was
14 frequently on the Internet or, you know, working on his
03:09 15 computer. I assume when he was working on his computer he
16 wasn't doing bookkeeping work, so it was the Internet.

17 MR. BERNHOFT: Objection, Your Honor. Lack of
18 foundation of foundation and personal knowledge. Move the
19 strike.

03:09 20 THE COURT: Overruled.

21 BY MR. JACOBS:

22 Q. Do you know the last time you spoke to Mr. Stuart?

23 A. I don't remember exactly. It's probably a couple of years
24 ago.

03:09 25 MR. JACOBS: Judge, I think I moved Exhibit 113 and

1 115 into evidence.

2 THE COURT: They have been received.

3 MR. JACOBS: And I have no further questions for the
4 witness.

03:09 5 EXAMINATION

6 BY THE COURT:

7 Q. Mr. Walsh, let me ask several questions before
8 cross-examination. You were asked about the defendant's use of
9 the Internet. Do you know for a fact that the defendant was on
10 the Internet?

03:10

11 A. Yes, he did. He did his research --

12 Q. Just yes or no.

13 A. Yes.

14 Q. All right.

03:10 15 Counsel, you may cross.

16 MR. BERNHOFT: Thank you, Judge.

17 CROSS-EXAMINATION

18 BY MR. BERNHOFT:

19 Q. Good afternoon, Mr. Walsh.

03:10 20 A. Hello.

21 Q. How are you?

22 A. I'm doing fine.

23 Q. Excellent. My name is Bob Bernhoft, and I'm Mr. Jim
24 Stuart's attorney defending him in this federal criminal tax
03:10 25 action. One moment, please.

1 A. Sure.

2 (Brief pause.)

3 BY MR. BERNHOFT:

03:11 4 Q. Mr. Walsh, are you familiar with the history of the
5 alternative minimum tax?

6 A. Yes, I am.

7 Q. Could you give me the basic outline of that history?

8 A. It was a tax that was instituted, I don't know the exact
9 years, it was instituted or passed into law in order to capture
03:11 10 taxes that were being missed primarily by wealthy people or high
11 income people.

12 Q. And isn't it true that initially when it was first passed it
13 was to capture what some people thought were abusive tax
14 positions taken by the super wealthy?

03:11 15 A. That's correct too, yes.

16 Q. I think the AMT was originally intended to capture only
17 .1 -- one-tenth of 1 percent of all American taxpayers. Are you
18 familiar with that number?

19 A. I'm not familiar with the number, but I agree with it. It's
03:11 20 very likely.

21 Q. And what happened with the AMT application as years passed
22 in its application? Did it remain a net to capture super
23 wealthy income tax?

24 A. No, it over time, because of inflation and rising wages and
03:12 25 other income from people, that remained static and the incomes

1 went up and so ultimately instead of covering just some small
2 number of people, it began to include more and more and more
3 people, yes. It's very common.

03:12

4 Q. And do you know what the current percentage of Americans
5 that are captured by the AMT?

6 A. No, I don't.

7 Q. Would Mr. Stuart have been the first client to have
8 expressed frustration over being captured by the AMT net?

9 A. No, he would not have been.

03:12

10 Q. It's fairly common that productive clients will question why
11 all of their deductions are eviscerated by the capturing of the
12 AMT; is that correct?

13 A. That's correct.

03:13

14 Q. There was a little Post-It note that you testified to that
15 was part of the tax package for a particular year, Mr. Walsh,
16 and on that Post-It note - and you've testified and read that
17 note - Mr. Stuart was asking you to get his tax bill as low as
18 possible.

03:13

19 Would Mr. Stuart have been the only client of yours
20 over your decades of career that has asked you to try and get
21 their tax bill as low as possible?

22 A. No, he would not.

03:13

23 Q. How many of your clients do you think have asked you to do
24 that over the decades that you've been practicing as a senior
25 partner CPA?

1 A. Oh, that's impossible for me to answer. But many people ask
2 that, yes.

3 Q. Anything wrong with a client of yours, when you were a
4 practicing CPA, asking you to get their tax bills as low as
03:13 5 possible?

6 A. No.

7 Q. Mr. Walsh, you testified that you offered to give Jim Stuart
8 your Master Tax Guide. Could you explain what a Master Tax
9 Guide is for the jury?

03:14 10 A. It's a handbook that is published every year with all the
11 changes and basically all of the rules and regulations necessary
12 for you to keep updated on. It's a reference manual for
13 preparing tax returns. It's like a dictionary for taxes.

14 Q. Fair to say that the underpinning authority for the Master
03:14 15 Tax Guide is the actual Internal Revenue Code?

16 A. Yes, it is.

17 Q. And as supplemented by the Code of Federal Regulations in
18 26 CFR?

19 A. Uh-huh, yes.

03:14 20 Q. All right. Now, Mr. Walsh, you referenced a 2007 meeting
21 with Mr. Stuart where he and you exchanged views regarding tax.
22 And particularly you discussed Mr. Stuart's position and views
23 on tax; is that correct?

24 A. Yes. Yes.

03:15 25 Q. And I think your testimony was, is that it was your

1 intention to persuade Mr. Stuart that he was wrong about his
2 legal conclusions regarding the tax.

3 A. Yes.

4 Q. All right. Now, during that meeting with Mr. Stuart, did
03:15 5 you advise Mr. Stuart what section of the Internal Revenue Code
6 made him liable for the federal income tax?

7 A. No, I didn't.

8 Q. Did you advise Mr. Stuart what law or code section or
9 regulation required Mr. Stuart to file the Form 1040 to make a
03:15 10 personal return of income?

11 A. I advised him that I had over 35 years of experience and
12 that I knew what I was talking about, and that I was -- had been
13 practicing for those years, and I was with an accounting firm
14 and I had all kinds of support to support me, and that I was
03:16 15 right and he was wrong. And that if he needed any further
16 information, he should go to the Master Tax Guide rather than
17 the Internet and the Cracking the Code book for his information.

18 Q. But let me re-ask the question again. You did not advise
19 Mr. Stuart what code section or regulation required him to file
03:16 20 a Form 1040 to make a return of personal income?

21 A. I did not.

22 Q. Okay. Turning to my first question. I mean, what code
23 section does make Mr. Stuart liable for the federal income tax?

24 A. I don't know off the top of my head. I don't know.

03:16 25 Q. All right. And what code section or regulation requires

1 Mr. Stuart to file the Form 1040 to make a return of personal
2 income?

3 A. I don't know.

4 MR. BERNHOFT: No further questions.

03:17 5 MR. JACOBS: I don't have any redirect.

6 THE COURT: You may step down. Please do not discuss
7 your testimony with anyone unless you're advised this case has
8 been completed. Have a good afternoon.

9 (Witness excused at 3:17 p.m.)

03:17 10 THE COURT: I hope Marco Island is warmer than
11 Milwaukee.

12 THE WITNESS: It is.

13 (General laughter.)

14 MR. JACOBS: Judge, I have another witness. Will the
03:17 15 court take a break or not?

16 THE COURT: Yes, we will take a very short break.

17 THE BAILIFF: All rise.

18 (Jury out at 3:17 p.m., recess taken until 3:30 p.m.)

19 THE COURT: Where do you stand with respect to your
03:30 20 witnesses?

21 MR. JACOBS: Judge, I have two witnesses here. And I
22 don't actually expect that they'll take the balance of the day,
23 but I would ask the court if we would break at the conclusion.
24 Those would be our last citizen witnesses.

03:30 25 THE COURT: If we can go further -- again, because of

1 my calendar tomorrow, if we can go further. I just talked with
2 the marshal and they've made personnel arrangements based upon
3 what we talked about earlier. Can you get the other witnesses
4 here so we can proceed as far as we can?

03:30 5 MR. JACOBS: Okay.

6 THE COURT: All right. Do that. Bring them in. You
7 have your coordinators here to relay the information?

8 (Jury in at 3:31 p.m.)

9 MR. JACOBS: Your Honor, the United States would next
03:31 10 call Daniel Hau. Mr. Hau, if you would come forward, approach
11 the witness stand, remain standing and be placed under oath.

12 THE REPORTER: Raise your right hand, please.

13 DANIEL HAU, GOVERNMENT WITNESS, SWORN

14 THE REPORTER: Please state your name and spell your
15 name for the record.

16 THE WITNESS: Daniel Hau, H A U.

17 DIRECT EXAMINATION

18 BY MR. JACOBS:

19 Q. Good afternoon, Mr. Hau. Mr. Hau, can you tell me, where do
03:32 20 you currently live?

21 A. I live in Franklin. City of Franklin.

22 Q. And what is your educational background?

23 A. I have a Bachelor of Science from Marquette University.
24 Major in Accounting and Finance.

03:32 25 Q. And are you a certified public accountant?

1 A. Yes, I am.

2 Q. And when did you obtain your CPA?

3 A. I believe I passed the exam in 1970. And I didn't become
4 officially accredited until I think '72, because there was an
03:32 5 experience requirement that I had to meet as well.

6 Q. And by way of experience, could you briefly provide an
7 overview of your employment history after graduating from
8 Marquette?

9 A. After Marquette I went to work for Peat Marwick Mitchell as
03:33 10 an auditor. Peat Marwick Mitchell was one of the so-called
11 Big 8 firms at that time. They have now morphed into KPMG, one
12 of the Big 4 CPA firms. I was there for four years and then I
13 went to work for Milwaukee County, the Department of Audit,
14 where I eventually rose to the position of Acting Director of
03:33 15 the Department of Audit.

16 And after that I started my own practice.

17 Q. And when was that, when did you start your own practice?

18 A. 1981.

19 Q. And do you still have that practice today?

03:33 20 A. Yes, I do.

21 Q. And what is that practice called?

22 A. Hau and Associates, SC.

23 Q. Where is that business located?

24 A. We have two offices. We have an office at 1208 West Layton
03:34 25 Avenue right near the airport, and then we have a smaller office

1 in Pewaukee on Highway 164 and Capitol.

2 Q. Would you describe the nature of the business?

3 A. We do accounting and taxes for small businesses and
4 individuals. Some of the businesses aren't so small anymore.

03:34 5 We have a couple of clients in the 15 to 20 million range in
6 sales.

7 I also do consulting. We do some estate and trust
8 work. I do some strategizing, some of the corporate and tax
9 strategizing work for our firm. Selection of entity. Those
03:34 10 types of things.

11 Q. And as part of that, do you represent clients before the
12 IRS?

13 A. Well, I've handled audits for clients that are being audited
14 by the IRS.

03:34 15 Q. That's what I meant, I'm sorry.

16 A. Yes.

17 Q. And do you know approximately, on an annual basis, how many
18 tax returns you and your colleagues prepared through your firm?

19 A. I believe it's somewhere around 1300 returns.

03:35 20 Q. Are those individual returns?

21 A. Those are the individual returns. In addition to that we
22 do, I don't know, three to 400 various types of business
23 returns. Could be more, I haven't counted lately.

24 Q. All right. Do you know an individual named James Stuart?

03:35 25 A. Yes, I've met him on a few occasions.

1 Q. Do you recognize him here today?

2 A. Yes, I do.

3 Q. And could you just identify him by where he's seated, what
4 he's wearing?

03:35 5 A. Well, he's wearing a tie, he's to the right of the -- I
6 imagine those are two attorneys at the desk over there.

7 Q. When you say to the right, I guess to his right, but to your
8 left?

9 A. To my left, yes. He's the closest one to me.

03:35 10 MR. JACOBS: I'd ask the record reflect that the
11 witness has identified the defendant, Your Honor.

12 THE COURT: Noted.

13 BY MR. JACOBS:

14 Q. Do you recall when you first met Mr. Stuart?

03:35 15 A. I believe it was in the fall of '80 -- or, excuse me, '80.
16 2007, 2008, I don't remember the exact date. I would have to
17 look it up.

18 Q. Is there something you were going to refer to that would
19 refresh your recollection?

03:36 20 A. Yes, I have -- somewhere in this binder I have my
21 timesheets, and that would give me an idea when that happened.

22 Q. Do you think if you looked at it it would refresh your
23 recollection?

24 A. Yes.

03:36 25 Q. Okay. I'd like you to look at it, then put it away, and

1 then I'll ask you if that, in fact, does refresh your
2 recollection.

3 A. It must have been in the fall of 2007.

03:36

4 Q. Okay. Do you recall the circumstances under which you first
5 met Mr. Stuart?

6 A. Yes.

7 Q. What was that?

03:37

8 A. The son of one of the owners of a company that we used to do
9 work for, and had since gone out of business, called me up and
10 let me know that the company that he was now working for, or at
11 that time was working for, was looking for an accountant and
12 suggested I might want to give Mr. Stuart a call, which I did.

13 Q. And did the son of the former client tell you what the name
14 of the business was?

03:37

15 A. Yes, I believe he did.

16 Q. And what was that?

17 A. New Age Chemical.

03:37

18 Q. Okay. And again, if you need to refer to something to
19 refresh your recollection if you just let me know so at least
20 the record reflects that you're doing that.

21 A. Okay. I just confirmed the name of the company by looking
22 on my binder.

23 Q. Sure. Okay. So based on that information, what, if
24 anything, did you do, Mr. Hau?

03:37

25 A. Well, I met with Mr. Stuart. He informed me that there was

1 a corporation that he was -- had terminated operation of the
2 business as a corporation and was now going to operate it as, I
3 believe it was an LLC.

4 Q. Where did you meet with him?

03:38 5 A. At his office.

6 Q. And do you remember where that was?

7 A. It's off of Highway 83, just off of Highway 94.

8 Q. Do you know the city?

9 A. It's just south of --

03:38 10 Q. If there's something that you can look at --

11 A. I can look it up. I'm just drawing a blank. Delafield,
12 yeah. It's Delafield.

13 Q. What was the nature of the work that Mr. Stuart wanted you
14 to do?

03:38 15 A. Well, he wanted me to wrap up the corporate affairs to the
16 extent we could for the old entity. And initially his intent
17 was to handle the partnership return for the period after the
18 corporation was basically closed down.

19 Q. And what would be your role in closing down this
03:39 20 corporation?

21 A. Well, I suppose I should mention the date here. The normal
22 year-end of the entity had been September 30th. He had, what,
23 overseen or did a transaction as of July -- effective July 31st
24 to transfer the assets and liabilities of the corporation to the
03:39 25 new entity. And my role was to, first off, see that -- at least

1 as I saw it -- my role was to see that the books properly
2 reflected what the intention was, and then to do the corporate
3 tax return, and then to do the normal accounting for the
4 partnership or for the LLC whose fiscal year was September 30,
03:39 5 so for that two-month period, do some work. And then, again, I
6 think the original intention was that I was going to do the
7 partnership return for the new entity.

8 Q. Okay. And do you recall what type of tax return were you
9 asked to prepare for the old entity, the one that was being
03:40 10 closed down?

11 A. That was an S Corporation. Corporation taxed as an
12 S Corporation.

13 Q. What does that mean?

14 A. Well, corporations can be taxed in two ways. They can
03:40 15 either be taxed as a C Corporation, which means that the profits
16 of the entity are taxed at the corporate level and so the
17 corporation has to pay the tax. Or it can be taxed as a, what's
18 called an S Corporation. In that event the profits are --
19 there's no tax paid at the corporate level, generally speaking,
03:40 20 but the individual -- the income of the entity is "passed
21 through," is the term that's used, to the individuals that own
22 the stock in the corporation.

23 Q. And does that S Corporation still have to file a tax return?

24 A. Yes.

03:41 25 Q. And what's the name --

1 A. For as long as it's in business it needs to.

2 Q. And what's the name of that tax return?

3 A. 1120S.

03:41 4 Q. Okay. And were you going to prepare an 1120S for the entity

5 that was closing down?

6 A. Yes.

7 Q. Now, did Mr. Stuart ask you to prepare his personal tax
8 returns?

9 A. No, he did not.

03:41 10 Q. Is that unusual or typical?

11 MR. BERNHOFT: Objection.

12 THE COURT: Sustained.

13 BY MR. JACOBS:

03:41 14 Q. Did Mr. Stuart indicate why he didn't want you to prepare
15 his personal tax returns?

16 A. My recollection is that he told me that some of the
17 positions that he was taking as it relates to his personal
18 return were not typically the ones that an accountant would
19 agree were acceptable to the IRS.

03:42 20 Q. Did Mr. Stuart attempt to convince you of his perspective?

21 A. I think he tried to explain to me his rationale for what he
22 was doing. Whether he was trying to win me -- I can't say that
23 he was trying to win me over to prepare his personal return, but
24 he tried to explain to me his rationale for the positions that
03:42 25 he intended to take.

1 Q. Do you recall what he told you?

2 A. Well, the long and short of it is that he said that he did
3 not have to report -- or he didn't have to pay the taxes on the
4 income that was, in my view, attributable to him.

03:43 5 Q. Did he tell you why?

6 A. He did, but some of the explanations were not explanations
7 that made any real sense to me.

8 Q. Do you remember what he said?

9 A. Well, one of the things that he said was, he made a
03:43 10 distinction between James Stuart, the individual, and the Social
11 Security number that corresponded to James Stuart. He said that
12 they were two different entities. That the income that was
13 reported either on -- you know, on -- for example, on a K-1,
14 which is a form that's used on a 1120S, that that income
03:43 15 belonged to the Social Security number but not to James Stuart
16 the human being.

17 Q. Did you make any effort to dissuade or persuade Mr. Stuart
18 that his views were not accurate?

19 A. Yes, I did.

03:44 20 Q. What did you do?

21 A. Well, I didn't realize what -- the position he was taking
22 initially. I think -- at the first meeting I think I started to
23 get some clue where -- that he was one of these people who felt
24 they didn't have to pay tax. And so then I began to research
03:44 25 more thoroughly what the IRS position has been on this in the

1 past. And I remember I did some research on-line and looked up,
2 you know, some articles about what the IRS had done and what the
3 Supreme Court had ruled on these types of matters.

4 Q. Did you communicate that research to Mr. Stuart?

03:45 5 A. Yes, I did. I told him that the -- that people have tried
6 to take this position in the past, and that there were various
7 reasons why people felt they didn't have to pay tax, and that
8 they've been shot down in every case and that it just hasn't
9 held up.

03:45 10 Q. Did you warn Mr. Stuart at all about the positions he was
11 taking?

12 MR. BERNHOFT: Objection, leading.

13 THE COURT: Sustained.

14 BY MR. JACOBS:

03:45 15 Q. Did you say anything to Mr. Stuart about the positions he
16 was taking?

17 A. Yes.

18 Q. What did you say?

19 A. I told him that -- I said I grasped that he felt there was
03:45 20 some constitutional issues and all of this to support his
21 position, but I told him that the IRS has a special place, an
22 IRS hell, for people who take these positions.

23 Q. Had you located case law rejecting Mr. Stuart's position?

24 A. I don't recall. I do recall that I did find some articles
03:46 25 that -- I didn't look at the specific case law, but what the

1 decisions that have been rendered which was basically that those
2 people who had taken the position that they didn't have to pay
3 income taxes were defeated in their position.

4 Q. And did you communicate that to Mr. Stuart?

03:46 5 A. Yes, I did.

6 Q. And do you know approximately when that would have been?

7 A. This was in the fall of -- late fall of 2007, and then I
8 think even a little further into 2008. Into early 2008.

9 Q. Mr. Hau, did you ultimately prepare any tax returns for
03:47 10 Mr. Stuart?

11 A. Yes, I did.

12 Q. Do you recall what tax returns you prepared?

13 A. Yes. I prepared -- from referring to my notes, I see that
14 -- and from the file, I see that I prepared the Form 1120S for
03:47 15 him, for New Age Chemical, Inc. I did not prepare the tax
16 return for the entity that followed, the new entity.

17 Q. Let me hand you what's been marked for identification as
18 Exhibit 137. Do you recognize what Exhibit 137 is?

19 A. Yes. This is our standard transmittal letter that
03:47 20 accompanies the tax returns that we provide to -- provide to the
21 client. So, along with this would have gone the federal return,
22 the state return, and the copy for the client. This is probably
23 our in-house copy of what we provided. Or your copy of my copy.

24 Q. Got you. Just one second. Let me give you my copy.

03:48 25 (Witness peruses document.)

1 BY MR. JACOBS:

2 Q. Again, you recognize what 137 is?

3 A. Yes. This is a -- this is the same transmittal letter but
4 it's excerpts of what I had just looked at. It's not the entire
03:49 5 return.

6 Q. And for what period of time is this return?

7 A. It's from October 1st, 2006, through September 30th, 2007.
8 Well, it actually goes through September 30th, even though the
9 transfer of assets took place on July 31st.

03:49 10 Q. I see.

11 Your Honor, I'd move into evidence Exhibit 137.

12 THE COURT: Is there any objection?

13 MR. BERNHOFT: None.

14 THE COURT: It's received.

03:49 15 (Exhibit 137 offered and received.)

16 BY MR. JACOBS:

17 Q. And during that period of time -- I'm sorry, what's the
18 entity this pertains to?

19 A. New Age Chemical, Inc.

03:49 20 Q. And did New Age Chemical, Inc. make a profit or have
21 earnings for that period?

22 A. Yes, it did. Do you want to know how much?

23 Q. Yeah, how much?

24 A. Well, it's 277,000 on here, but I can't -- there may have
03:50 25 been some additional deduction, which I'd have to look up for

1 what's called Section 179 which is a deduction that would have
2 been passed through as well.

3 Q. And did New Age Chemical, Inc. have to pay taxes on those
4 earnings?

03:50 5 A. No.

6 Q. Did anyone?

7 A. The income was allocated or passed through to the
8 individual. So it would have been Mr. Stuart and I believe his
9 sister was the other owner.

03:50 10 Q. And is that reflected somewhere on the return you prepared?

11 A. Yes, but it's not here.

12 Q. And where would that be?

13 A. It would be on Form K-1 that accompanies the tax return.

14 Q. Let me hand you then what's been marked as Exhibit 138. Do
03:51 15 you recognize what Exhibit 138 is?

16 A. Yes, that's the K-1 for Mr. Stuart.

17 MR. JACOBS: Your Honor, I'd move into evidence
18 Exhibit 138.

19 THE COURT: Is there any objection?

03:51 20 MR. BERNHOFT: None.

21 THE COURT: It's received.

22 (Exhibit 138 offered and received.)

23 BY MR. JACOBS:

24 Q. Can you explain to the jury what this exhibit is?

03:51 25 A. This shows Mr. Stuart's share of income. So he is -- share

1 of ordinary income is 194,766. And this is also his share of
2 what the gain from the sale of goodwill to the new entity.

3 MR. JACOBS: Excuse me one second. I think we may
4 have a little technical glitch here.

03:52 5 (Brief pause.)

6 MR. JACOBS: Sorry.

7 BY MR. JACOBS:

8 Q. Can you tell me the amount of income attributable to
9 Mr. Stuart from New Age Chemical for this period of time?

03:53 10 A. \$194,766 of ordinary income and the capital gain, short-term
11 capital gain of 21,092.

12 Q. And would Mr. Stuart be required to report this income on
13 his individual tax return?

14 A. Yes.

03:53 15 Q. For what year would he have to report this?

16 A. For the year-ended December 31st 2007.

17 Q. And did you prepare such a tax return?

18 A. I didn't prepare his personal return ever.

19 Q. Okay. Now, was this corporate tax return and this schedule
03:53 20 K-1 for Mr. Stuart, was this provided to Mr. Stuart?

21 A. Yes.

22 Q. Who provided it to him?

23 A. Well, I don't recall if we mailed it or hand delivered it.
24 I don't recall. Or if he picked it up. He may have picked it
03:54 25 up. I don't recall.

1 Q. Did you ever meet with Mr. Stuart to discuss this tax
2 return?

3 A. I honestly don't -- I don't recall whether we had a final
4 meeting on the return itself.

03:54 5 Q. Okay.

6 A. I think I had told him what the results were. I would
7 imagine I did but I don't specifically recall the conversation.

8 Q. All right. Now, did you ever have any disputes with
9 Mr. Stuart concerning how his name was capitalized?

03:54 10 A. Yes.

11 Q. And do you recall when you had that dispute?

12 A. Well, we had prepared the original return I think on --
13 well, the original transmittal letter is dated January 31st. We
14 sent the return out to him, and -- or it got to him somehow, I
03:54 15 don't remember exactly how, and then he objected to it because
16 apparently the name, his name was not all in caps and he
17 insisted that I revise the Form K-1 so that the name be all in
18 caps.

19 Q. And did you do that?

03:55 20 A. Yes.

21 Q. And did you have any discussions with Mr. Stuart about why
22 he wanted his name capitalized?

23 A. Well, I was -- I think he had talked about this somewhat
24 earlier in some of our earlier meetings, but I guess I didn't
03:55 25 realize the import of it. And he said that if I didn't put the

1 name all in caps it would defeat the purpose of what he was
2 trying to accomplish.

3 Q. Now, did you ultimately make that change?

4 A. Yes.

03:55 5 Q. And I guess that's what's reflected on the K-1 in
6 Exhibit 138.

7 A. Correct.

8 Q. Now, did you ever communicate with Mr. Stuart except in
9 person?

03:56 10 A. Well, I think we had phone conferences at different times.
11 And there were some e-mails back and forth at some point.

12 Q. And I'd like to show you what's been marked for
13 identification as Exhibit 140. Do you recognize what
14 Exhibit 140 is?

03:56 15 A. Yes.

16 Q. And generically what is that?

17 A. Well, he wrote me an e-mail basically stating that I didn't
18 understand --

19 Q. Is it fair to say though this is an e-mail exchange between
03:56 20 you and Mr. Stuart?

21 A. Yes. He sent me an e-mail and then I responded.

22 MR. JACOBS: Your Honor, I move into evidence
23 Exhibit 140.

24 THE COURT: Is there any objection?

03:56 25 MR. BERNHOFT: None, Your Honor.

1 THE COURT: 140 is received.

2 (Exhibit 140 offered and received.)

3 BY MR. JACOBS:

4 Q. And now, your portion of the e-mail is up top.

03:57 5 A. Right.

6 Q. And I gather on the bottom is Mr. Stuart's e-mail.

7 A. Yes. I'm not sure we have all of Mr. Stuart's e-mail. I
8 think this is -- there's another page here that's missing, I
9 believe.

03:57 10 Q. Right. I gather this e-mail has -- do you have two pages to
11 that e-mail?

12 A. I only have one page here.

13 Q. Oh, maybe I inadvertently -- give me just one second.

14 (Brief pause.)

03:58 15 BY MR. JACOBS:

16 Q. At the bottom of yours is the beginning of an e-mail; is
17 that right?

18 A. Yes.

19 MR. BERNHOFT: Your Honor, based on the witness's
03:58 20 testimony I object to this document retrospectively. Rule of
21 completeness. 106.

22 BY MR. JACOBS:

23 Q. That is, you have your half of the e-mail --

24 THE COURT: One second. Do you wish to be heard at
03:58 25 side bar?

1 MR. BERNHOFT: Please.

2 MR. JACOBS: Judge, I just need a moment. I just need
3 to get him the full document.

4 THE COURT: All right, go ahead.

03:58 5 (Brief pause.)

6 BY MR. JACOBS:

7 Q. Let me hand you what's been marked for identification as
8 Exhibit 139. Is it correct that 139 is the initial e-mail from
9 Mr. Stuart that 140 is responding to?

03:59 10 A. Yes.

11 Q. They've just been broken into two separate documents,
12 correct?

13 A. Correct.

14 MR. JACOBS: Your Honor, I'd move into evidence then
03:59 15 Exhibit 139 and 140.

16 MR. BERNHOFT: In conjunction, no objection.

17 THE COURT: Received.

18 (Exhibit 139 offered and received.)

19 BY MR. JACOBS:

03:59 20 Q. Okay. Now, then maybe if you could explain the relationship
21 or the exchange between you and Mr. Stuart. First of all,
22 what's the date of the exchange?

23 A. February -- his e-mail to me is dated February 6, 2008.

24 MR. JACOBS: Could you put on 139? Thanks.

03:59 25 BY MR. JACOBS:

1 Q. I'm sorry. What's his date? I apologize.

2 A. The date of his e-mail to me is dated February 6, 2008.

3 Q. And can you describe the substance of his e-mail to you?

03:59 4 A. The substance of his e-mail is that I was not understanding
5 his position as relates to tax matters and he's explaining that
6 to me.

7 Q. And then turning to 140, you respond to his e-mail, what's
8 the date of your response?

9 A. February 7th.

04:00 10 Q. And I wondered if you could read, first of all, the second
11 paragraph of your e-mail, Exhibit 140. Can you read that out
12 loud?

13 A. Yes. "Because of the positions that you are taking on these
14 tax matters, I am obligated to ask that you acknowledge that I
04:00 15 have advised you that you, James Stuart, are required to pay
16 taxes associated with the Social Security number which bears
17 your name spelled out in capital letters, and/or most likely,
18 those funds which were established -- those trusts which were
19 established regarding the approximate 70 percent ownership which
04:00 20 does not involve Beverly."

21 Q. Okay. And the next paragraph?

22 A. "Nonetheless, Hau and Associates can prepare the tax returns
23 for New Age, Ltd. We intend to show the returns involving you
24 or the Social Security number which bears your name spelled out
04:01 25 in capital letters or those trusts which are not controlled or

1 set up by Beverly are self-employment income. If I fail to
2 handle this matter in any other way it is my opinion that my CPA
3 license would be in jeopardy."

04:01 4 Q. Now, Mr. Hau, what are you talking about? "Associated with
5 the Social Security number which bears your name spelled out in
6 capital letters."

7 A. Yes.

8 Q. What do you mean?

9 A. Well, that was the distinction that Mr. Stuart was making to
04:01 10 me. Again, that if a K-1 said that there's a pass-through of
11 income to James Stuart and the reference on there is James
12 Stuart spelled in capital letters, that it -- that that does not
13 mean that he, the human being, has to pay taxes on that
14 pass-through.

04:02 15 Q. And did you agree with that?

16 A. No.

17 Q. And did you communicate your disagreement to Mr. Stuart?

18 A. Yes. It's in this e-mail.

19 Q. Now, this e-mail is dated February 7, 2008. Did you
04:02 20 continue to do work with Mr. Stuart after you sent him this
21 e-mail in February of 2008?

22 A. To the best of my recollection he responded with a letter
23 telling me that basically he was not going to work with me any
24 further.

04:02 25 Q. And did he continue to work with you?

1 A. No. To the best of my recollection. I mean, there may have
2 been some minor wrap-up of things; but no, no further services
3 he was asking me to do.

04:03 4 MR. JACOBS: That's all I have for this witness,
5 Judge.

6 MR. BERNHOFT: Can I have just one moment to confer?

7 THE COURT: Certainly.

8 MR. BERNHOFT: Thank you.

9 (Brief pause.)

04:03 10 MR. BERNHOFT: Thank you, Judge.

11 CROSS-EXAMINATION

12 BY MR. BERNHOFT:

13 Q. Good afternoon, Mr. Hau.

14 A. Good afternoon.

04:04 15 Q. How are you?

16 A. Good, I hope.

17 Q. Okay. It's going to be easy.

18 Could we leave that 140 exhibit up on the screen,
19 please? Would that be all right?

04:04 20 MR. JACOBS: 140?

21 MR. BERNHOFT: Please. The one that's up there right
22 now.

23 BY MR. BERNHOFT:

24 Q. Now, Mr. Hau, I'm Bob Bernhoft, I'm the attorney
04:04 25 representing Jim Stuart in this federal criminal tax case. I

1 just have a couple of questions.

2 And if I could refer you to the exhibit that's been
3 marked and admitted 140. Referring you to paragraph 2.

4 A. Yes.

04:04 5 Q. And you had read that into the record to the jury
6 previously. And you're telling Mr. Stuart, you're memorializing
7 the fact that you've advised him that he's required to pay
8 taxes --

9 A. Yes.

04:04 10 Q. Okay. -- associated with that Social Security number.
11 Would those be income taxes?

12 A. Well, it's income taxes. And I was concerned there was also
13 a question possibly about self-employment tax as it relates to
14 the new entity. And I was advising him that in my opinion he
04:05 15 would most likely have to pay self-employment tax as well on any
16 pass-throughs from the new entity.

17 Q. In addition to income tax.

18 A. Yes.

19 Q. And you testified, Mr. Hau, that you had had phone
04:05 20 discussions with Mr. Stuart about his position on tax as well as
21 e-mail exchanges in these letters?

22 A. I don't recall how much discussion we had over the phone.
23 Most of the arguments that he posed were in person.

24 Q. So these were primarily personal discussions respecting his
04:05 25 engagement with you on his tax position.

1 A. Yes. It was he and I in the room alone on those issues.

2 Q. During these discussions or in any other written
3 correspondence or e-mails, did you advise Mr. Stuart what
4 section of the Internal Revenue Code makes him liable for the
04:06 5 income tax?

6 A. No.

7 Q. All right. During any of these personal discussions or in
8 any other e-mail or written communications, did you advise
9 Mr. Stuart what code, section or regulation requires him to file
04:06 10 the Form 1040 to make a return of that income?

11 A. No. No.

12 Q. Can you tell me, given the fact that he's taken the position
13 that he's not required to pay the income tax, did it occur to
14 you to make those advisements to him?

04:06 15 A. No.

16 Q. All right. If it had occurred to you could you have told
17 him what section of the code made him liable for the tax?

18 A. Perhaps if I had researched it I would have been able to. I
19 did not.

04:06 20 Q. But that would have required some research?

21 A. Yes. On my part it would.

22 Q. All right.

23 No further questions.

24 MR. JACOBS: I don't have any redirect, Your Honor.

04:07 25 THE COURT: You may step down. Please do not discuss

1 your testimony with anyone unless you're advised this case has
2 been completed. Have a good afternoon. You may leave those
3 there.

4 (Witness excused at 4:07 p.m.)

04:07 5 MR. JACOBS: Your Honor, next we would call Joel
6 Nettesheim.

7 Sir, if you would step up to the witness stand, remain
8 standing and be placed under oath.

9 THE REPORTER: Raise your right hand, please.

10 JOEL NETTESHEIM, GOVERNMENT WITNESS, SWORN

11 THE REPORTER: Please state your name and spell your
12 name for the record.

13 THE WITNESS: It's Joel Nettesheim. It's J O E L,
14 middle initial G, Nettesheim is N E T T E S H E I M.

04:08 15 DIRECT EXAMINATION

16 BY MR. JACOBS:

17 Q. Good afternoon, Mr. Nettesheim.

18 A. Good afternoon.

19 Q. Sir, can you tell me where you currently live? What city?

04:08 20 A. Brookfield, Wisconsin.

21 Q. And what is your educational background?

22 A. I have a bachelor's of business administration degree from
23 the University of Wisconsin-Milwaukee.

24 Q. And when did you receive that degree?

04:09 25 A. 1980.

1 Q. And are you a certified public accountant?

2 A. Yes.

3 Q. And do you know when you received your CPA?

4 A. Approximately 1983.

04:09 5 Q. And how are you currently employed?

6 A. I'm a CPA and principal at SVA Certified Public Accountants.

7 Q. And SVA, was that formerly known as Suby Von Haden and
8 Associates?

9 A. Correct.

04:09 10 Q. And how long have you been there?

11 A. Approximately 16, 17 years.

12 Q. Would you just explain what your responsibilities are at
13 that firm?

14 A. I'm one of the leaders of our Business Advisory Services

04:09 15 Group, and we work with clients performing the normal CPA duties
16 such as tax accounting as well as business consulting services.

17 Q. In connection with that responsibility have you ever had
18 dealings with an individual named James Stuart?

19 A. Yes.

04:09 20 Q. Do you know when you first had dealings with Mr. Stuart?

21 A. Quite awhile ago with a company called React, LLC. It was a
22 company he was a partner in.

23 Q. And do you know approximately when that would have been?

24 A. Late '90s, early 2000. I can't remember the exact date.

04:10 25 Q. And what was the nature of your business relationship with

1 Mr. Stuart?

2 A. With React?

3 Q. Yes.

4 A. Making sure the accounting was done properly.

04:10 5 Q. And are you still doing that work for React?

6 A. No, that company was sold.

7 Q. And do you know approximately when that was?

8 A. Let's call it maybe the late '90s.

9 Q. Okay. And would you recognize Mr. Stuart if you saw him
04:10 10 today?

11 A. Yes.

12 Q. Do you see him here in the courtroom today?

13 A. Yes, I do.

14 Q. Could you just identify him by where he's seated and what
04:10 15 he's wearing?

16 A. Left side of the second table, and I'm color blind but I
17 think that's blue.

18 Q. At least you got the left side.

19 Your Honor, I would ask that the court -- that the
04:10 20 record reflect the witness has identified the defendant
21 Mr. Stuart.

22 THE COURT: Noted.

23 BY MR. JACOBS:

24 Q. Did you do any other work for Mr. Stuart other than the work
04:11 25 in connection with React?

1 A. I did some work for New Age Chemical Corporation.

2 Q. And do you know when was the first time or when you started
3 doing work for New Age Chemical?

04:11 4 A. Approximately I would say sometime, what, in 19 -- I mean,
5 excuse me, in 2008, where I was formally doing work. I did some
6 business consulting before that but very minor.

7 Q. And what was the nature of the work you did for New Age
8 Chemical?

9 A. Prepared their final corporate return.

04:11 10 Q. And do you know when that was you would have prepared the
11 final return?

12 A. Assuming the last corporate year if I remember was September
13 30th, 2008, assuming that was the final fiscal year, that work
14 would have been done within six months after that year-end.

04:12 15 Q. All right. And was there someone in particular you
16 primarily dealt with on that work?

17 A. In working with our accounting we usually worked with Bev on
18 the accounting and Jim on other matters.

19 Q. Okay. And Bev, that would be Beverly Schlipp?

04:12 20 A. Yes.

21 Q. And am I correct she's the minority owner of New Age
22 Chemical?

23 A. Yes.

24 Q. And Jim, that would be James Stuart.

04:12 25 A. Correct.

1 Q. And do you know their respective ownership interests in New
2 Age Chemical?

3 A. It's about 70/30. 70 percent for Mr. Stuart and 30 percent
4 for Mrs. Schlipp.

04:12 5 Q. Okay. And as a result of that engagement did you prepare a
6 tax return for New Age Chemical?

7 A. Corporation, yes.

8 Q. I guess that's Inc., yes?

9 A. Yes.

04:12 10 Q. And you said you prepared their final return, what happened
11 to the business?

12 A. The business was liquidated.

13 Q. And did it just cease operating?

14 A. As a corporation, yes. It was -- the assets were
04:13 15 transferred over into a limited partnership.

16 Q. Do you know the name of that limited partnership?

17 A. New Age, Ltd. Partnership I believe is the official name.
18 Something close to that.

19 Q. And do you know who are the owners of that limited
04:13 20 partnership?

21 A. Yes, approximately -- - I think 1 percent I believe some
22 sort of a trust, 30 percent still with Bev, and then the rest to
23 Mr. Stuart, I believe. Something like that.

24 Q. And do you continue to do work for that limited partnership?

04:13 25 A. I do accounting work still, yes.

1 Q. And could you describe the nature of the work that you do
2 for the New Age Chemical, Ltd. Partnership?

3 A. Sure. They asked us just to make sure the accounting
4 records are properly closed out every year. So we do our normal
04:13 5 accounting type work where we make year-end journal entries,
6 record depreciation and things like that.

7 Q. And, now, the corporation, New Age Chemical, Inc., when that
8 closed out, do you know what type of structure it had for tax
9 purposes?

04:14 10 A. It was an S Corporation.

11 Q. And I know the jury's heard this a lot, but can you explain
12 your understanding what that means?

13 A. S Corporation is what we call a pass-through entity in the
14 tax world whereby any earnings or profits generated by the
04:14 15 corporation don't get taxed at the corporate level, rather, they
16 get passed through and get taxed at the individual shareholders'
17 level.

18 Q. And how do the shareholders know how much to report and pay
19 taxes on?

04:14 20 A. They are given a K-1 that is part of the corporate tax
21 filing.

22 Q. And what does the K-1 do?

23 A. K-1 shows your proportionate share of the earnings or the
24 losses of the entity.

04:14 25 Q. And is the shareholder who gets a K-1 required to report

1 those earnings on their own individual tax returns?

2 A. They're supposed to use that and even include it on their
3 personal return, yes.

04:15

4 Q. Now, you say that the corporation, New Age Chemical, Inc.,
5 that ended or was closed out?

6 A. It was liquidated -- I think it was September 30th, 2008. I
7 believe that was the final one.

8 Q. And the assets of the business entity, where did they go?

04:15

9 A. They were distributed out to the shareholders and then the
10 shareholders contributed them to the limited partnership.

11 Q. Now, the limited partnership, the New Age Chemical, Ltd.,
12 what type of tax structure, what type of structure did it have
13 for tax purposes?

14 A. Pardon me? What was the question?

04:15

15 Q. What kind of structure did it have for tax purposes? How is
16 it treated by --

17 A. It's taxed as a partnership.

18 Q. And how is that?

04:15

19 A. Similar to the S Corporation whereby the partnership -- at
20 the partnership entity level it does not pay tax on its annual
21 earnings or profits; rather, the shareholders, in this case the
22 members or the partners, pay tax on their proportionate share of
23 those earnings.

04:15

24 Q. All right. And, now, is there a specific form that an
25 S Corporation uses to report its earnings?

1 A. Yes, it's a Form 1120S.

2 Q. And is there a specific tax form that a partnership uses to
3 report its earnings?

4 A. It's a Form 1065.

04:16 5 Q. And, now, with a 1065 for a limited partnership, is there
6 some mechanism that the share -- or the partners are notified as
7 to what their earnings are that they have to report?

8 A. A similar form as the S Corp, it's called a K-1 again.

9 Q. Let me show you first what's been marked for identification
04:16 10 as Exhibit 132, I'm gonna say. Bear with me one moment.

11 (Brief pause.)

12 BY MR. JACOBS:

13 Q. Sir, do you recognize what Exhibit 132 is?

14 A. Yes. This is the final tax return. I note the actual year
04:17 15 is September 30th, 2007. I've been saying 2008.

16 Q. Okay. Did you prepare this return?

17 A. Yes.

18 Q. And do you know approximately when you would have prepared
19 it?

04:17 20 A. Usually sign off on the date that I deliver it to the
21 client. It says April 15th, 2008 here.

22 Q. So your signature is on there.

23 A. Yes.

24 Q. Okay.

04:17 25 Your Honor, I'd move into evidence Exhibit 132.

1 MR. BERNHOFT: No objection, Your Honor.

2 THE COURT: Received.

3 (Exhibit 132 offered and received.)

4 BY MR. JACOBS:

04:17 5 Q. And you mentioned -- did you provide this to the client?

6 A. Yes.

7 Q. And how did you provide it to the client?

8 A. Don't recall. It's either mail or personal delivery.

9 Q. Does this tax return cover a full 12 months?

04:18 10 A. Yes, it did. It would say that if it didn't. So on this
11 return it did cover the full months -- not necessarily means it
12 wasn't operating, it could have been only operating for 11
13 months, but this return says it was covered for a full 12
14 months.

04:18 15 Q. And what are those 12 months? What's the period?

16 A. October 1st, 2006 through September 30th, 2007.

17 Q. And did the New Age -- this is for the Inc., right? New Age
18 Chemical, Inc., right?

19 A. Correct.

04:18 20 Q. Did it make money during that period of time?

21 A. Yes, it did.

22 Q. How much money did it make?

23 A. Well, from a financial statement point of view it made
24 \$285,000.

04:18 25 Q. And were the shareholders of that corporation required to

1 report some or all of that earnings on their personal tax
2 returns?

3 A. Well, the taxable portion of that which was a little bit
4 less, yes.

04:18 5 Q. Is that reflected somewhere in that return how much and
6 which shareholders had to do that?

7 A. I assume it is. Let me double-check.

8 Q. Sure.

9 (Witness peruses document.)

04:19 10 A. Yes. It's in here.

11 BY MR. JACOBS:

12 Q. Okay. And who and how much? Can you tell?

13 A. Yes. For Bev -- there's a lot of different components of
14 the income that were allocated to her, but the ordinary income
04:19 15 portion is 79,822.

16 Q. That's for Beverly Schlipp?

17 A. Yes. There's some other stuff on here but --

18 Q. Okay. And how about for --

19 A. Mr. Stuart, 189,001.

04:19 20 Q. Okay. And what year would Mr. Stuart have had to report
21 that earnings, that income on his personal tax returns?

22 A. On his 2007 Individual Income Tax Return.

23 Q. Now, I believe you indicated this return was the final
24 return for the Inc., for the corporation?

04:19 25 A. Correct.

1 Q. Did you prepare any tax returns for the limited partnership
2 that succeeded that corporation?

3 A. We weren't engaged to do that.

4 Q. But you did some work for the limited partnership?

04:20 5 A. Yes.

6 Q. And what was that again?

7 A. Generally, accounting work. Making sure the year-end
8 financial informations were accurate.

9 Q. And let me hand you what have been marked for identification
04:20 10 as Exhibits 134 -- I'm sorry, 135 and 136. I'll say 135 and
11 136.

12 Judge, I wonder --

13 THE COURT: The screens are blank right now. They are
14 blanked at this point in time because nothing has been --
04:21 15 nothing has been specifically asked to be put up.

16 MR. JACOBS: Okay.

17 (Brief pause.)

18 BY MR. JACOBS:

19 Q. And there's 136. Do you recognize what Exhibits 135 and 136
04:22 20 are?

21 A. Yes.

22 Q. Just generically, can you tell me what they are?

23 A. The top copy are the financial statements for the years
24 ended December 31st, 2007 and 2008. And the documents attached
04:22 25 to here appear to be various different types of work papers that

1 help to substantiate the financial statements.

2 Q. And so -- and do these both pertain to New Age Chemical,
3 Ltd.?

4 A. Correct.

04:23 5 Q. And are these records that your firm prepared?

6 A. I suspect they are.

7 Q. And is that as part of your engagement with Mr. Stuart?

8 A. Yes.

9 MR. JACOBS: Your Honor, I'd move into evidence
04:23 10 Exhibits 135 and 136.

11 MR. BERNHOFT: No objection, Your Honor.

12 THE COURT: Received.

13 (Exhibits 135-136 offered and received.)

14 BY MR. JACOBS:

04:23 15 Q. And I believe you indicated you and your firm did not
16 prepare tax returns for this entity New Age Chemical, Ltd. for
17 either 2007 or 2008; is that right?

18 A. We were just engaged to prepare or to do these financial
19 accounting processes.

04:23 20 Q. Were you engaged to do any other work using those records?

21 A. Not that I can recall.

22 Q. Sure. Did you do any work for Beverly Schlipp?

23 A. Yes.

24 Q. What type of work did you do for Ms. Schlipp?

04:24 25 A. We prepared her personal Individual Income Tax Returns.

1 Q. And do you know for what year you do that?

2 A. I could say we probably did it for 2008, 2009, 2010. Don't
3 know about 2007.

04:24

4 Q. Okay. And as part of that, did you report on her tax
5 returns her share of the earnings from New Age Chemical, Ltd.?

6 A. Yes.

7 Q. And how did you figure out -- was there a return that you're
8 aware of filed for New Age Chemical, Ltd.?

04:24

9 A. I'm not aware of a return that was filed, but it's pretty
10 easy for me to figure that out because I knew what the allocable
11 income to Beverly was for each of these years and, therefore, I
12 was able to easily put it on her return.

04:24

13 Q. For example, the limited partnership, New Age Chemical,
14 Ltd., did it make money for its year ending December 31st, 2007?
15 I guess that's Exhibit 135.

16 A. First of all, that's probably a short year, it's not a full
17 year. But it did make money, yes.

18 Q. Can you tell how much money the limited partnership made?

19 A. \$24,318.

04:25

20 Q. And did Beverly Schlipp have to report some of that earnings
21 or profits on her personal tax returns?

22 A. Correct.

23 Q. How much did she have to report?

04:25

24 A. I would say 30 percent of that which would be about 7500
25 bucks. Eight grand.

1 Q. Did someone else have to report the balance of those
2 earnings on their tax returns?

3 A. Whoever the other shareholders were.

4 Q. I guess partners. Members?

04:25 5 A. Partners.

6 Q. Partners? And who is that, do you know?

7 A. Well, I'm not exact on the ownership. As I said before, I
8 think there's a trust involved and I think Mr. Stuart is
9 involved or something like that.

04:25 10 Q. And whoever that partner is, they had to report the income
11 from the limited partnership.

12 A. Yes.

13 Q. Did you prepare a K-1 to reflect that?

14 A. No.

04:25 15 Q. Did you prepare a K-1 for Beverly Schlipp?

16 A. We may have put the numbers on a K-1 just to put it in her
17 tax file, or we would have just put it on, you know, a
18 handwritten sheet. So it could have been done either way.

19 Q. Why didn't you prepare a K-1 for the other partners?

04:26 20 A. We weren't engaged to prepare the tax return.

21 Q. How about for the year ending in 2008, did the business, the
22 New Age Chemical, Ltd. Partnership, did it make money in 2008?

23 A. Yes, it did.

24 Q. How much money did it make?

04:26 25 A. \$287,963.

1 Q. And did Ms. Schlipp have to report some of those earnings on
2 her tax return?

3 A. Approximately 30 percent of that.

4 Q. And did you prepare a K-1 for her for that?

04:26 5 A. We either prepared a K-1 or we did it manually. You know,
6 just for tax simply indication we may have put the numbers on a
7 K-1 just to make it easier to prepare and review her return.

8 Q. Were you aware of any tax return being prepared for that
9 limited partnership?

04:26 10 A. Not that I'm aware of.

11 Q. How about K-1s being prepared for that limited partnership?

12 A. There may have been one for Bev but that would be all that
13 I'd say that I'd be aware of.

14 Q. And are K-1s supposed to be filed with the IRS?

04:27 15 A. With the entity return but not the shareholder return. The
16 partner return.

17 Q. And the K-1 you prepared, if you did prepare one for
18 Beverly, was that sent into the IRS?

19 A. No.

04:27 20 Q. Did you prepare a K-1 for the other partners in New Age
21 Chemical, Ltd. Partnership for 2008?

22 A. No. No.

23 Q. Why not?

24 A. I wasn't engaged to do so.

04:27 25 Q. I mean, there's definitely earnings that the members -- the

1 partners have to report, correct?

2 A. There definitely is allocable earnings to the other
3 partners. Or partner or partners.

4 Q. You said -- what were the total earnings for 2008?

04:27 5 A. \$287,963.

6 Q. And so, how much did Ms. Schlipp report?

7 A. I would say 30 percent of that. What does that come out to,
8 about \$90,000?

9 Q. And the balance, you don't know who or whether that was
04:28 10 reported or not.

11 A. Correct.

12 MR. JACOBS: That's all I have for this witness,
13 Judge.

14 CROSS-EXAMINATION

04:28 15 BY MR. BERNHOFT:

16 Q. Good afternoon, Mr. Nettesheim.

17 A. Good afternoon.

18 Q. I'm Bob Bernhoft, I represent Jim Stuart in this case.

19 Just confirming, you still do accounting work for New
04:28 20 Age Chemical, Ltd.; is that correct?

21 A. Correct. Correct.

22 Q. And could you explain a little more detail what sort of
23 accounting work you're still doing for New Age Chemical, Ltd.?

24 A. Well, the company would like to make sure that their
04:28 25 accounting records are properly closed out at the end of the

1 year, and as accountants we can go and make sure the cash ties
2 out, the depreciation and the fixed assets tie out.

3 The various balance sheet items tie out, such as cash,
4 accounts receivable, fixed assets, accounts payable. Things
04:29 5 like that.

6 Q. And --

7 A. What I mean by "tie out" is that they are correct.

8 Q. And did you also do accounting work for New Age Chemical,
9 Incorporated before the dissolution and transfer of assets to
04:29 10 Limited?

11 A. I did some consulting work over the years but my primary
12 where I was -- I was hired to do the September 30th, 2007
13 report, to do the final closeout tax return preparation.

14 Q. And when you work with New Age Chemical, Ltd. and Beverly
04:29 15 Schlipp and Mr. Stuart, what sort of condition do you find --
16 general condition do you find the company's books and records
17 in?

18 A. Very good.

19 Q. And Ms. Schlipp is a good controller, good bookkeeper?

04:29 20 A. Yes.

21 Q. There's been some discussion on Mr. Jacobs' direct about New
22 Age Chemical, Ltd. and the fact that you were not engaged, your
23 firm was not engaged to file a partnership return; is that
24 correct?

04:30 25 A. Yes.

1 Q. You've also testified that under the vast majority of
2 circumstances a partnership as an entity does not have a tax
3 liability, the income is passed through to the partners; is that
4 right?

04:30 5 A. Yes.

6 Q. And it's taxable to the partners as income.

7 A. Yes.

8 Q. Is it particularly problematic if a partnership does not
9 file a partnership return given the fact that the pass-through
04:30 10 entity partnership, the income is taxed to the partners?

11 A. It depends what you mean by problematic. I mean, IRS would
12 like to see a form filed.

13 Q. Is there some sort of a fine or penalty if the partnership
14 doesn't file that?

04:31 15 A. Yes. They have a penalty of approximately \$150 per partner
16 per month for a maximum of six months.

17 Q. All right. Has it been your experience that in working with
18 New Age Chemical, Ltd. and Mr. Stuart and Bev Schlipp, that the
19 partnership and Mr. Stuart have authorized your firm and spent
04:31 20 money with your firm to do whatever work is required to make
21 certain that Ms. Schlipp has her allocable income determined
22 such that she can file a timely 1040 return?

23 A. Absolutely.

24 Q. There was discussion and testimony on direct about this
04:31 25 dissolution of New Age Chemical, Incorporated transfer of assets

1 to the shareholders and then the shareholders capitalizing or
2 transferring assets to the partnership. Do you recall your
3 testimony about that?

4 A. Yes.

04:32 5 Q. When you were called upon to assist in accounting for the
6 dissolution asset transfer and then reconveyance or
7 capitalization of Limited, did Mr. Stuart and/or Ms. Schlipp,
8 did they provide you with any accounting work product that they
9 already had relative to the dissolution and transfer?

04:32 10 A. Yes. They have to present me with accounting information.

11 Q. Right. And do you recall, was that accounting information
12 performed by some other form?

13 A. There was a preliminary closeout done by another CPA, yes.

14 Q. Do you recall who that CPA was?

04:32 15 A. It was Dan Hau.

16 Q. Okay. Did you find CPA Hau's work product useful in terms
17 of using it to go forward and do what needed to be done to do
18 this -- excuse me.

19 A. It was good preliminary information.

04:32 20 Q. It was good preliminary information. Okay.

21 Did Jim Stuart ever talk to you about tax law in the
22 Internal Revenue Code?

23 A. I don't remember -- he certainly did at times. I don't
24 recall the discussions very well.

04:33 25 Q. Okay.

1 A. But I'm sure there were a few times.

2 Q. Was there a time where he provided any materials relative to
3 what he had been researching?

4 A. Yeah. One time he did certainly give me some information.

04:33 5 Q. Do you recall what that information was?

6 A. It was definitely some paperwork and then a book, I believe.

7 Q. Did you have opportunity to review the book or the
8 paperwork?

9 A. Not really. I maybe covered the first chapter but my
04:33 10 schedule is pretty busy so I didn't -- I wasn't able to get
11 through it.

12 Q. Fair enough. The discussions you had with Mr. Stuart about
13 tax, how would you characterize those discussions? Were they
14 serious discussions?

04:34 15 A. From what I recall clearly he knew something that I did not.
16 He was definitely spending some time investigating it, I could
17 tell that.

18 Q. So you considered him to be a -- well, did you ever doubt
19 his sincerity?

04:34 20 A. No. I guess he was passionate about it.

21 Q. During those engagements with Mr. Stuart, did you ever
22 advise Mr. Stuart what code section made him liable for the
23 federal income tax?

24 A. I don't recall that I would have done that. And if he did
04:34 25 ask it, regrettably I don't know if I could identify it.

1 Q. You wouldn't be able to identify the liability section of
2 the code?

3 A. No. No.

4 Q. Would you be -- would you have been able to tell Mr. Stuart
04:35 5 what code section or regulation required him to file the
6 Form 1040 to make a personal return of income?

7 A. No, I'm not educated on that to tell you the truth on the
8 specific code sections you have to file. I just know how to
9 prepare returns and give tax advice.

04:35 10 MR. BERNHOFT: All right.

11 I have nothing further, Your Honor. Thank you.

12 THE COURT: Is there any redirect?

13 MR. JACOBS: No, Your Honor. Oh wait. I'm sorry, I
14 apologize. I got distracted for a minute.

04:35 15 REDIRECT EXAMINATION

16 BY MR. JACOBS:

17 Q. Mr. Nettesheim, Mr. Bernhoft asked you about the accounting
18 records of New Age Chemical, Ltd., did they include any tax
19 returns?

04:35 20 A. For the Limited?

21 Q. Yes.

22 A. No.

23 Q. Am I correct the reason that a partnership files a 1065 and
24 the K-1s is to notify the government the earnings that the
04:36 25 partners have to report on their individual returns?

1 A. I would agree.

2 Q. Sort of like why employers file W-2s for their employees?

3 A. Yes.

4 Q. And if that return is not filed is the government made aware
04:36 5 of the earnings that the partners have to report?

6 A. No, they would not know.

7 MR. JACOBS: Nothing further, Judge.

8 MR. BERNHOFT: No recross, Your Honor.

9 THE COURT: You may step down. Please do not discuss
04:36 10 your testimony with anyone unless you're advised this case has
11 been completed.

12 (Witness excused at 4:36 p.m.)

13 THE COURT: Have a good evening.

14 MR. JACOBS: Judge, could I be heard at side bar?

04:36 15 THE COURT: Certainly.

16 (At side bar on the record.)

17 MR. JACOBS: Judge, that's the last of our citizen
18 witnesses. The remaining witnesses are the case agent and the
19 summary witness who has to prepare a summary of the tax
04:37 20 calculations based on the evidence at trial.

21 THE COURT: All right, the case agent can testify
22 today then.

23 MR. JACOBS: I wonder if we could use the restroom.

24 THE COURT: All right, we'll take a break.

04:37 25 (End of discussion at side bar.)

1 THE COURT: We're entering our last stretch for the
2 day so we can -- we'll take a break at this time. We'll resume
3 shortly.

4 THE BAILIFF: All rise.

04:37 5 (Jury out at 4:37 p.m.)

6 (Recess taken at 4:38 p.m., until 4:57 p.m.)

7 (Jury in at 4:57 p.m.)

8 THE COURT: You may proceed.

9 MR. JACOBS: For our next witness, Your Honor, the
04:58 10 United States calls Special Agent Matthew Rech. Mr. Rech.

11 THE REPORTER: Raise your right hand, please.

12 MATTHEW RECH III, GOVERNMENT WITNESS, SWORN

13 THE REPORTER: Please state your name and spell your
14 name for the record.

04:58 15 THE WITNESS: My name is Matthew J. Rech III. Last
16 name is spelled R E C H, with three Roman numerals.

17 DIRECT EXAMINATION

18 BY MR. JACOBS:

19 Q. Mr. Rech, how old are you?

04:59 20 A. I'm 43.

21 Q. And where are you currently employed?

22 A. I'm employed as a special agent for the Internal Revenue
23 Service in Milwaukee.

24 Q. How long have you worked for Internal Revenue Service?

04:59 25 A. It will be six years this February.

1 Q. Would you tell me what your educational background is?

2 A. I have a Bachelor of Arts in Criminology and Law Studies
3 from Marquette University. I have a Masters in Business
4 Administration from DeVries University. And I completed some,
04:59 5 approximately six or seven classes in the Masters of Tax Program
6 at University of Wisconsin-Milwaukee.

7 Q. Would you explain -- I'm sorry, what's your current position
8 with the Internal Revenue Service?

9 A. I'm employed as a special agent.

05:00 10 Q. And what are your responsibilities as a special agent?

11 A. Criminal enforcement of Title 26 -- of Title 18, Section 26
12 of the Internal Revenue Code, enforcing the criminal violations
13 of the Internal Revenue Code and other financial crimes, fosters
14 a confidence in the tax system and promotes compliance.

05:00 15 Q. Have you been a special agent your entire time with the IRS?

16 A. That's correct.

17 Q. In connection with that responsibility are you familiar with
18 an individual named James Stuart?

19 A. Yes, I am.

05:00 20 Q. And do you see him here today in court?

21 A. Yes, I do.

22 Q. Would you identify him by where he's seated and what he's
23 wearing?

24 A. He's the individual with a blue suit seated on the far left
05:00 25 of the defense table.

1 MR. JACOBS: I'd ask the record reflect the witness
2 has identified the defendant James Stuart.

3 THE COURT: Noted.

4 BY MR. JACOBS:

05:01 5 Q. And how did you first become familiar with Mr. Stuart?

6 A. (No response.)

7 Q. Let me try to rephrase that. Were you assigned to an
8 investigation of Mr. Stuart?

9 A. Yes, I was.

05:01 10 Q. And when was that?

11 A. July 29th of 2008 is when the case originated.

12 Q. And as part of that assignment did you receive copies of
13 correspondence between Mr. Stuart and the IRS?

14 A. Yes, I did.

05:01 15 Q. Now, in connection with your investigation did you conduct a
16 search warrant, a federal search warrant at the business
17 premises of New Age Chemical in Delafield, Wisconsin?

18 A. Yes, sir, I did.

19 Q. When was that?

05:02 20 A. It was on the day of January -- February 19th. February
21 19th of 2009.

22 Q. And as a result of that search warrant did you seize records
23 from that business premises?

24 A. Yes, sir, we did.

05:02 25 Q. Can you describe just generally what was seized?

1 A. There was paper records regarding what's commonly known as
2 check stubs, some W-2s with Mr. James Stuart's name and some
3 1099s in his name as well, Form 1099s.

05:02 4 Q. All right. I'd like to show you a series of records and
5 then I'm going to ask you some questions about them. I'm going
6 to hand you what have been marked for identification -- I'm
7 going to do these in groups if that's all right. I'm going to
8 start with Exhibits 150 through 156.

05:03 9 Look at each of those folders and then I'll ask you
10 some questions about the items in them. I should note I believe
11 152 has already been admitted so I won't be handing you that
12 one. So 150, 151, 153, 154, 155, and 156.

13 (Witness peruses documents.)

14 A. I've completed a review, sir.

05:06 15 BY MR. JACOBS:

16 Q. Okay. And are each of those exhibits records pertaining to
17 Mr. Stuart that you seized at the business premises of New Age
18 Chemical in February of 2009?

19 A. Yes, sir.

05:07 20 MR. JACOBS: Your Honor, I'd move into evidence
21 Exhibits 150, 151, 153, 154, 155, and 156.

22 MR. BERNHOFT: No objection, Your Honor.

23 THE COURT: Received.

05:07 24 (Exhibits 150, 151, 153, 154, 155 and 156 offered and
25 received.)

1 MR. JACOBS: And, Your Honor, I'd ask permission to be
2 able to publish certain of those documents to the jury.

3 THE COURT: Proceed.

4 BY MR. JACOBS:

05:07 5 Q. First of all, I'd like to draw your attention to
6 Exhibit 150. What is that?

7 A. This is a Form 1099 Miscellaneous.

8 Q. Can you describe to whom it pertains and what it reflects?

9 A. It pertains to -- its recipient's name is James Stuart, 3675
05:08 10 Kettle Court East, Hartland, Wisconsin, 53029. It's for the
11 year 2005. The payer's name is New Age Chemical, Incorporated,
12 located at 3765 Kettle Court East, Delafield, Wisconsin, 53018.
13 In box number 7 it lists non-employee compensation of \$53,000 --
14 \$53,600 and zero cents.

05:08 15 Q. And is this income that Mr. Stuart should have reported on
16 his 2005 income tax return?

17 A. Yes, sir.

18 Q. And did you find other documents reflecting income for
19 Mr. Stuart for the year 2005 at the New Age Chemical?

05:08 20 A. Yes, sir.

21 Q. And in particular I'd like to turn your attention to 156.
22 The fifth page of 156. I think I have it up on the screen. Can
23 you explain to the jury, what is that?

24 A. This is a Form W-2, a wage and tax statement for the tax
05:09 25 year 2005. The employer's name is New Age Chemical,

1 Incorporated, located at 3764 Kettle Court East, Delafield,
2 Wisconsin, 53018. The employee's name, address and zip code is
3 James A. Stuart, Jr., at 2410 Hirshman Lane, Hartland,
4 Wisconsin, 53029.

05:09 5 The remaining boxes, box 1 lists an entirety of wages
6 for the year of 125,114.84. And then it also lists income tax
7 withheld in box 2 of 18,786.90. Taxable Social Security wages
8 of 90,000. Social Security tax withheld, \$5,580. Medicare
9 wages and tips of 107,078.18. And box number 6 lists the
05:10 10 Medicare tax withheld of 1,552.62.

11 There's also items in box 14, SH dash HE, of
12 18,036.66. And taxable F of 6,178.18.

13 Down below it lists information regarding the State of
14 Wisconsin, and box 16 mirrors box 1, and box 17 has a state
05:11 15 income tax withheld of 6,067.91.

16 Q. Now, I'm correct, this form has been redacted so that
17 Mr. Stuart's full Social Security number doesn't appear on it,
18 correct?

19 A. Yes, sir.

05:11 20 Q. And when you seized it his full Social Security number was
21 there?

22 A. Yes, sir.

23 Q. And as well as on the previous Form 1099 that we were
24 looking at, Exhibit 150. Correct?

05:11 25 A. Yes.

1 Q. And did you -- Exhibit 151. Explain to the jury what is
2 Exhibit 151.

3 A. Exhibit 151 is an additional Form 1099 Miscellaneous. The
4 payer's name is New Age Chemical, Inc., 3765 Kettle Court East,
05:12 5 Delafield, Wisconsin, 53018. The recipient's name is James
6 Stuart, Jr., the address of 2410 Hirshman Lane, Hartland,
7 Wisconsin, 53029. Again, it's a Form 1099 Miscellaneous for the
8 year 2006.

9 In box 7 it lists non-employee compensation of \$40,200
05:12 10 and zero cents.

11 Q. Now, would you look at Exhibits 153 and 154. Do you have
12 them there?

13 A. Yes.

14 Q. I won't bring them up on the screen. Can you explain to the
05:13 15 jury what are those items?

16 A. I'll start with Exhibit 153? 153 is entitled at the top,
17 "The New Age Chemical, Incorporated Check Register." What it
18 lists is the names of each employees, their wages, and their
19 withholdings for each period of the payroll period. It appears
05:13 20 to be every two weeks. And it started pay date of January 14th,
21 2005.

22 And the report goes to, I wanna say, 3/31 of 2006. It
23 appears to be the employer copy of what would be commonly known
24 or given to employees as a check stub that lists their
05:13 25 compensation and any tax withholdings, be that federal, Social

1 Security, Medicare, or state tax withholdings, and then
2 subsequent net pay for each employee during that time period.

3 Q. And was Mr. Stuart, James Stuart listed in that payroll
4 check register?

05:14 5 A. Yes, he is.

6 Q. And does it reflect wage payments to him during that period?

7 A. Yes, it does.

8 Q. And, now that covers only until, what's the end of that
9 check register?

05:15 10 A. It lists to March 31st of 2006.

11 Q. And what's Exhibit 154?

12 A. Exhibit 154 on top is entitled, New Age Chemical, Ltd.
13 Journal Detail Report sorted by journal ID, posting date and
14 reference number.

05:15 15 Q. Can you explain to the jury what is that?

16 A. This was received in the search warrant based on -- we had
17 -- a computer individual made a copy of their computer hard
18 drive and these were subsequently looked at. I guess they could
19 be called the books of original entry. There's a general
05:16 20 journal which includes various accounts payable to each --

21 several individuals and/or vendors. So it would be books of
22 original record for this time period as a journal detail report.

23 Q. In what period of time did that journal detail report cover?

24 A. If I remember entries posted here, October 3rd of 2006. In
05:16 25 the detail report the final entries on the final page are dated

1 December 18th of 2007.

2 Q. Do those records reflect payments to Mr. Stuart?

3 A. Yes, they do.

05:16

4 Q. And how frequent are the payments to Mr. Stuart reflected in
5 that record?

6 A. Appear to be approximately every two weeks.

7 Q. Now I want to show you what have been marked for
8 identification as Exhibits 157 through 166. Do you want to look
9 at those and then I'll ask you some questions.

05:17

10 A. Yes, sir.

11 (Witness peruses documents.)

12 A. I'm finished with my review, sir.

13 BY MR. JACOBS:

05:22

14 Q. Thank you. Can you tell me generically what are all those
15 exhibits?

16 A. Well, there's -- they break down into two separate
17 categories, sir.

18 Q. Okay. What are the two categories?

05:22

19 A. There's categories of -- the Form 1120S, the U.S. Income Tax
20 Return for S Corporations beginning I guess in the tax year
21 ending 2003 through 2007 for an entity titled, New Age Chemical,
22 Incorporated at 3765 Kettle Court East, Delafield, Wisconsin,
23 53018. Again, they're in order here and it begins -- they're a
24 fiscal year taxpayer so the very first tax return that is placed
05:22 25 here is ending September 30th, 2003, and the last one was

1 September 30th, 2007. It included the period ending 2003,
2 period ending 2004, 2005, 2006, and 7.

3 Q. And what's the other category of documents?

4 A. The other category of documents is a Form 1120S, Schedule
05:23 5 K-1 which is entitled the Shareholder's Share of Income, Credits
6 and Deductions.

7 And the shareholder's name for each one of these K-1s
8 is James A. Stuart, Jr. at 2410 Hirschman Lane, at Hartland,
9 Wisconsin, 53029. And the corporation's name is New Age
05:23 10 Chemical, Incorporated at 3765 Kettle Court East, Delafield,
11 Wisconsin, 53018.

12 Again, these K-1s are for each of those years, of
13 fiscal year ending September 30th, '03, 2003, through September
14 30th, 2007. And I reviewed each one of the actual 1120S's, the
05:24 15 U.S. Income Corporate Tax Return for S Corporations, and each
16 one of them have that secondary form, that K-1 enclosed within.

17 Q. All of these tax returns were found at New Age Chemical when
18 you searched it in February of 2009?

19 A. Yes, sir.

05:24 20 MR. JACOBS: I move Exhibits 157 through 166 into
21 evidence.

22 MR. BERNHOFT: No objection, Judge.

23 THE COURT: They're received.

24 (Exhibits 157-166 offered and received.)

05:24 25 BY MR. JACOBS:

1 Q. Just by way of example, Special Agent Rech, I put up on the
2 screen Exhibit 162. Just explain to the jury what, for example,
3 162 is?

4 A. Exhibit 162 is a Schedule K-1 from a Form 1120S for the tax
05:25 5 year beginning October 1st, 2004 and ending September 30th,
6 2005. The corporation's name is New Age Chemical, Incorporated,
7 3765 Kettle Court East, Delafield, Wisconsin, 53018. Box G
8 lists the shareholder's name, address of James A. Stuart, Jr.,
9 at 2410 Hirschman Lane, Hartland, Wisconsin, 53029.

05:25 10 Part 3 of this K-1 lists in box 1 the ordinary
11 business income for the year in question of 94,409. Box 9 has a
12 net Section 1231 gain or loss -- this appears to be a loss -- of
13 \$14,097 and zero cents. Box 11 has a Section 179 deduction of
14 17,387. Box 15 has a slash A and B, alternative minimum tax,
05:26 15 AMT items. Box A says negative \$3,321 and zero cents. Box B
16 has a negative \$3,445 and zero cents.

17 Q. Now, previously -- I want to show you what was previously
18 admitted into evidence as Exhibit 17.

19 Just give me a second.

05:27 20 Again, this is Exhibit 17 entitled, Filing History For
21 New Age Chemical, Inc. 2002 to 2010. And do you see the bottom
22 two rows, Stuart's ownership percentage and Stuart's income per
23 K-1?

24 A. Yes, I do, sir.

05:27 25 Q. And were you able to compare the K-1s that you found at New

1 Age Chemical to that table and verify that those amounts are
2 correct?

3 A. I did. Do you want me to validate it now?

4 Q. No. Have you done it prior to coming here today?

05:27 5 A. Yes, sir.

6 Q. So that's an accurate summary of the earnings attributable
7 to Mr. Stuart for those years in question.

8 A. Yes.

9 Q. Okay. Now, just briefly, after you -- no, let me stop.

05:28 10 Now, did you attempt to determine how much Mr. Stuart
11 had been paid during the years 2005 through 2007?

12 A. Yes, I did.

13 Q. And what records did you use to determine that?

14 A. I used some of the -- a couple of the exhibits are currently
05:28 15 up here. Shall I list the names?

16 Q. Why don't you just describe what you did.

17 A. Some of the records I used were the check register reports
18 that were listed that I found at the search warrant that listed
19 the -- commonly called a pay stub for each of the employees.
05:28 20 Mr. Stuart was on that list all the way through the first
21 quarter of 2006, on the check registry report.

22 I also used documents that was -- I previously
23 described in here. That was the 1099 for 2005 and 2006, and the
24 form, I believe it was in the last packet, of the W-2 form for
05:29 25 2005 as well.

1 Q. Did you use the journal on -- New Age Chemical's journal of
2 payments to Mr. Stuart?

3 A. I did, as well.

4 Q. And did you obtain any records from financial institutions?

05:29 5 A. Yes, sir.

6 Q. What financial records did you obtain?

7 A. For the 2005 tax year I obtained records from the bank,
8 Chase Bank, that was the corporate bank of New Age Chemical
9 listing direct deposits from that bank in amounts, and I matched
05:29 10 them up to Waukesha State Bank documents, bank statements that
11 were in the name of Mr. James Stuart for the direct deposits
12 that listed payroll deposits to his account in the year 2005.

13 Also in the year 2005, there was 1099 income that was
14 also direct deposited into Mr. Stuart's Waukesha State Bank
05:30 15 accounts.

16 Q. And were you able to trace payments from New Age Chemical to
17 Mr. Stuart's personal bank account?

18 A. Yes, sir.

19 Q. And where did he maintain his bank account?

05:30 20 A. At Waukesha State Bank.

21 MR. JACOBS: And, Your Honor, I'd like to read a
22 portion of the stipulation the parties have reached into the
23 record and then introduce the records associated with that.

24 THE COURT: Proceed.

25 TRIAL STIPULATION NO. 7 ADMITTED

1 MR. JACOBS: Paragraph 7 of the stipulation by the
2 parties reads as follows:

3 "If a representative of Waukesha State Bank, were
4 called to testify, he or she would testify that the following
05:31 5 exhibits are business records of the bank. The representative
6 of the bank would further testify that these records were
7 contemporaneously generated by persons with knowledge of the
8 information reflected in the records and/or received by the bank
9 in the regular course of its business activity and created
05:31 10 and/or received by the bank as a regular practice as part of the
11 bank's regularly conducted activity. The parties further
12 stipulate and agree that these exhibits can be admitted at the
13 trial in this case."

14 And these are Exhibits 71 through 89. They consist
05:31 15 of:

16 A signature card for an account ending in 3604;

17 The monthly statements for that account for the years
18 2005, 2006, 2007;

19 Deposit tickets and deposit items into that account;

05:31 20 They include a signature card for an account ending in
21 3402 in the name of James A. Stuart, Jr.;

22 The 2006 monthly statement, and the 2007 -- I'm sorry,
23 a monthly statement in 2006 dated September 9, 2006, and the
24 2007 monthly statements for the account ending in 3402;

05:32 25 They include the deposit tickets and items for that

1 account.

2 They include a signature card for Account Number 7435
3 which is in the name of the New Age Chemical, Ltd. Drawing
4 Account for the benefit of the Delafield Trust signed by James
05:32 5 A. Stuart, Jr.

6 They include the 2007 monthly statements for that
7 account;

8 The deposit tickets and items for that account.

9 They include a signature card for account number
05:32 10 ending in 9605 in the name of James A. Stuart, Jr.;

11 Checks made to cash from account number 3402;

12 Checks made to cash from account number 3604;

13 Checks made payable to cash from account number 7435.

14 They also include a loan application and supporting
05:32 15 documentation for a loan number ending in 9692;

16 The signature card for account number 0413, and;

17 A copy of check 1519, dated August 6, 2005;

18 A loan application and supporting documentation dated
19 April 2, 2003, for a loan number ending in 2913;

05:33 20 And then certificates of deposit with account numbers
21 ending in 9605 and 1210.

22 BY MR. JACOBS:

23 Q. And why did you need those accounts, Special Agent Rech?

24 What did you use those for?

05:33 25 A. The Waukesha State Bank accounts were the cash inflows from

1 the compensation Mr. Stuart received that went into his bank
2 account.

05:34

3 Q. Now, based on that information did you prepare summaries of
4 the payments -- compensation payments that Mr. Stuart received
5 from New Age Chemical for the years 2005, 2006 and 2007?

6 A. Yes, I did.

7 Q. Let me hand you then what have been marked for
8 identification as Exhibits 171, 172, and 173.

9 (Witness peruses documents.)

05:35

10 A. I'm finished, sir.

11 BY MR. JACOBS:

12 Q. Okay. And do you recognize what each of those three
13 exhibits is?

14 A. Yes, I do.

05:35

15 Q. Can you explain what are they, generally?

16 A. The exhibits starting with Exhibit 171 is a summary of the
17 2005 income payments for New Age Chemical to James A. Stuart.
18 First payment date is beginning on January 14th of 2005.

05:35

19 And it's important to note that the payments all the
20 way through August 31st of that year, 2005 -- excuse me, the
21 payments through August 12th of 2005, in that year, have federal
22 withholding that was also listed.

23 Q. Let me just stop you there. Are each of those the same type
24 of document?

05:36

25 A. Yes, sir.

1 Q. And each of them are derived from the records that you just
2 described and have been admitted here at trial?

3 A. Yes, sir.

4 MR. JACOBS: Your Honor, I move into evidence 171,
05:36 5 172, and 173.

6 MR. BERNHOFT: No objection, Your Honor.

7 THE COURT: They're received.

8 (Exhibits 171-173 offered and received.)

9 BY MR. JACOBS:

05:36 10 Q. I'll bring up 171 to start with. I'm going to just start
11 with the upper portion of that exhibit.

12 Again, can you explain to the jury what's summarized
13 on Exhibit 171.

14 A. 171 is a summary of the 2005 income payment from New Age
05:36 15 Chemical to James A. Stuart. The gross wages beginning on
16 August 14th of 2005 through August 12th of 2005 have federal
17 withholding that was removed in the far right column that's
18 listed.

19 In September 15th of 2005 through December 22nd of
05:37 20 2005, in the column listed 1099 earnings, is a list of numbers
21 that equal 53,600 and zero cents. The gross wage column equals
22 100,900 and zero cents. The federal withholding for 2005 is
23 18,786.90. The bottom column lists a total income payments for
24 2005 from January 14th, 2005 through December 22nd, 2005 is
05:38 25 \$154,500 and zero cents.

1 Q. Now, why are there multiple columns? We have a date. Why
2 is there a third and a fourth column with different numbers?
3 What's the difference?

4 A. The third and the fourth column, as listed in the previous
05:38 5 item, the check registers that I found in the search warrant,
6 listed -- the pay went directly from a W-2 wage earner to listed
7 to a 1099 earner, and at that date there was no wages that we --
8 removed that we could see on the pay stub.

9 Q. No wages that were removed?

05:38 10 A. Excuse me. No withholdings that were removed from the 1099
11 earnings from each of the pay stubs for that time period.

12 And then the fourth column is the cumulative total of
13 the federal withholding that was listed from the W-2 wages that
14 were listed on those, commonly referred to as the check stub
05:38 15 information that I had located in the search warrant.

16 Q. And do you know, were these payments made to Mr. Stuart in
17 checks?

18 A. The entirety of these were made by direct deposits into one
19 of his personal accounts at Waukesha State Bank.

05:39 20 Q. And do you know, were they made directly by New Age Chemical
21 or were they processed by a third party?

22 A. Processed by a third party.

23 Q. And who was that?

24 A. Payroll Data Services.

05:39 25 Q. And so this is 2005. If we turn to Exhibit 72. Can you

1 explain what is -- first of all, what is Exhibit 72?

2 A. Exhibit 172 is entitled, "The Summary of 2006 Income
3 Payments From New Age Chemical to James A. Stuart, Jr."

4 Q. And can you explain what's reflected on this summary?

05:39 5 A. This summary has items 1 through 24 with the correlating
6 dates for the year. It starts out I guess you could say in the
7 fifth column over from the left is entitled, "1099 Earnings,"
8 but also has a header of "Direct Deposit Payroll." Those six
9 items were also directly deposited into Waukesha State Bank and
05:40 10 were titled as 1099 earnings at aforementioned check stubs
11 located at the search warrant.

12 The total of that, if you go down to the bottom
13 column, is \$40,200 and zero cents.

14 The next column over with information has a header of
05:40 15 "Payroll Check Information," and the column entitled, "Check
16 Number" with the various check numbers from the New Age Chemical
17 accounts, business accounts. And finally, the final column has
18 the amount of the checks that were written out of that account.
19 For a bottom total of \$130,670 and zero cents.

05:41 20 Cumulatively, the \$40,200 and zero cents and the
21 \$130,670 and zero cents come to the bottom total of total income
22 payments for \$170,870 and zero cents.

23 Q. Okay, now, you said the direct deposits, where did they go?

24 A. The direct deposits went into a personal account, James A.
05:41 25 Stuart at Waukesha State Bank.

1 Q. And the checks, were you able to trace those?

2 A. Yes, I was.

3 Q. Where did they go?

4 A. Various personal accounts at Waukesha State Bank of
05:41 5 Mr. Stuart.

6 Q. Now, do you know, off of what account were these checks
7 written?

8 A. There was -- I believe in this year there was two accounts.
9 There was an account that was entitled -- it had a header under
05:42 10 New Age Chemical of a Payroll Account, and then after that they
11 were just out of another business account that New Age Chemical
12 had, business checking account.

13 Q. And did you do a similar analysis for the year 2007?

14 A. Yes, I did.

05:42 15 Q. And that's Exhibit 173? Can you describe the progression of
16 payments during 2007 to Mr. Stuart?

17 A. The payments start January 11, 2007. From January 11th,
18 2007, through item number 16 of July 31st of 2007, the payments,
19 total checks for deposit at Waukesha State Bank of the various
05:43 20 amounts, equal \$139,440 and zero cents.

21 After 8/14/2007 to the end of December 14th, 2007, the
22 payroll checks get deposited into a Waukesha State Bank that's
23 entitled, "The New Age Chemical, Ltd. Drawing Account."

24 Q. And in total then, how much was paid to Mr. Stuart during
05:43 25 2007 by New Age Chemical?

1 A. The entirety of that final column is \$87,890 and zero cents.
2 The two columns, after being added together, equal total income
3 payments for 2007 of \$227,330 and zero cents.

05:44

4 Q. And were there any income tax withholdings from those
5 payments?

6 A. There was none.

7 Q. Were there any withholdings from Medicare taxes?

8 A. There was none.

9 Q. Social Security taxes?

05:44

10 A. There was none.

11 Q. How about state income taxes?

12 A. There was none.

13 Q. How about for the year 2006, Exhibit 172, was there any
14 withholdings for that year?

05:44

15 A. There was none.

16 Q. Does the IRS have any record of any payments to the IRS on
17 Mr. Stuart's behalf for those years for income taxes or payroll
18 taxes?

19 A. There was for 2005.

05:44

20 Q. Yes.

21 A. Not for 2006 or 2007.

22 Q. Now, have you ever met Mr. Stuart, Special Agent Rech?

23 A. Yes. I have.

24 Q. And when was that?

05:45

25 A. It was in November of 2008.

1 Q. And can you describe the circumstances under which you met
2 Mr. Stuart?

3 A. I and a partner went out to do an initial interview at
4 Mr. Stuart's residence. That's on Hirschman Lane in Hartland,
05:45 5 Wisconsin. And upon arriving at the door we knocked on the
6 door, and that individual, Mr. Stuart, answered the door. He
7 would not identify himself, and stated we were trespassing on
8 land that was not hypothecated to the public.

9 He also stated that the individual we were looking for
05:46 10 does not exist; that individual is a separate entity that has a
11 Social Security number but that it was not him.

12 And then he repeated that if we needed any information
13 that this land was hypothecated, he directed us to the Waukesha
14 County deed office.

05:46 15 This was after presenting my credentials.

16 Q. And subsequent to searching New Age Chemical, did your
17 office receive some correspondence from Mr. Stuart?

18 A. Yes.

19 Q. Let me just show you what's been marked as Exhibit 170.
05:47 20 Special Agent Rech, do you recognize what Exhibit 170 is?

21 A. I do, sir.

22 Q. Is that, in fact, a letter sent from James Stuart to the
23 IRS?

24 A. Yes, sir.

05:47 25 MR. JACOBS: Your Honor, I move into evidence

1 Exhibit 170.

2 MR. BERNHOFT: No objection, judge.

3 THE COURT: Received.

4 (Exhibit 170 offered and received.)

05:47 5 BY MR. JACOBS:

6 Q. I wonder, first of all, it's obviously identified to a
7 specific individual, do you know who that individual is?

8 A. Yes, Francine L. Evans was my Special Agent in charge who is
9 now retired.

05:47 10 Q. And I wondered if you could read the letter. It's not too
11 long.

12 A. Yes. It's addressed again to Ms. Francine Evans, Special
13 Agent In-Charge, dated November 19th, 2009, to the Internal
14 Revenue Service, 600 North Robert Street, St. Paul, Minnesota,
05:48 15 55101.

16 "Greetings Ms. Evans: February 19, 2009, a group of
17 persons purporting to act under the authority of the
18 Commissioner as agents of the IRS conducted a search of a
19 business located adjacent to 3765 Kettle Court East in
05:48 20 Delafield, Wisconsin and seized private property under the guise
21 of alleged violations of Title 26 U.S.C. Sections 7201 and
22 7206(1). The aforesaid act was performed without any prior
23 notice or opportunity to defend given to me at the
24 administrative agency level. Because the IRS is an agency of
05:48 25 the United States, and because I am entitled to administrative

1 due process, I, not being a U.S. citizen subject to the
2 jurisdiction of IRS, am requesting that you, in your capacity as
3 special agent in charge of criminal investigation of IRS,
4 provide in writing and in a timely manner, a specification of
05:49 5 the issues the IRS relied upon to conduct the aforesaid search
6 and seizure.

7 "Thank you very much for your cooperation in this
8 matter.

9 "Respectfully, James Arthur Stuart, Jr., in my
05:49 10 capacity as a Wisconsin national only.

11 "Mailing location, care of non-domestic mail at 3215
12 Golf Road, number 105, near Delafield, Wisconsin, zip code
13 53018.

14 Q. And what's the date of that letter?

05:49 15 A. The date of the letter is November 9th, 2009.

16 Q. Are you familiar with other correspondence Mr. Stuart has
17 sent to the IRS?

18 A. Yes, I am, sir.

19 Q. I know some of that was reviewed earlier today with
05:50 20 Ms. Morgan, but I'd like to turn your attention to what's been
21 marked for identification as Exhibit 59.

22 And, Your Honor, pursuant to paragraph 3 of the
23 stipulation I'd move Exhibit 59 into evidence.

24 THE COURT: It's received.

05:51 25 (Exhibit 59 offered and received.)

1 BY MR. JACOBS:

2 Q. And turning your attention -- what's the date of this
3 correspondence, Special Agent Rech?

4 A. January 22nd, 2009.

05:51 5 Q. And to whom is it directed?

6 A. It's directed to the United States Treasury Department,
7 Attention Secretary, and then it has an asterisk mark.

8 Q. And can you just read the first paragraph of the letter?

9 A. "Greetings, Secretary of the Treasury, served party: Please
05:52 10 find enclosed formally served instruments that expressly
11 canceled United States citizenship and nationality, in marks,
12 i.e., so-called dual citizenship," end of paragraph, "from
13 inception. As a matter of law, such has been recognized and
14 accepted by the executive department of the United States of
05:52 15 America and the government de facto of my country of domicile."

16 Q. And I'd like to just draw your attention to a couple other
17 parts of this document. This middle paragraph beginning with
18 "accordingly." Can you read that?

19 A. "Accordingly, I hereby formally request a hearing to review
05:53 20 these matters; however, if I do not hear from you or your office
21 within 30 days, it will be my understanding that you find that I
22 am not a 'taxpayer'," in quotation, "as defined by the Internal
23 Revenue Code, Title 26, Section 7701. If I do not hear from
24 you, I will consider this matter concluded, and retroactively I
05:53 25 understand that my income was/is without the United States.

1 Moreover, at this time please forward any bona fide contracts
2 that you believe I have with the United States; and further,
3 note that I formally protest the currency of the United States,
4 see attached documentation incorporated hereto as actual
05:53 5 notice."

6 Q. How many pages is this document?

7 A. There's two pages and the third page is blank. My third
8 page is blank. But there's two pages, the first page, and then
9 there's a second page that appears to have two Notary Publics
05:54 10 from the State of Wisconsin on it.

11 Q. And what's the title of the second page of this document?

12 A. "Documentation of National Status in Regard to James Arthur
13 Stuart, Jr."

14 Q. And then the third page?

05:54 15 A. My third page, sir, is blank.

16 Q. Let me move on to a different letter. Let me show you next
17 what's been stipulated as correspondence from Mr. Stuart sent to
18 the IRS.

19 This is Exhibit 44. And based on paragraph 3 of the
05:55 20 stipulation, Your Honor, I'd move Exhibit 44 into evidence.

21 THE COURT: Received.

22 (Exhibit 44 offered and received.)

23 THE WITNESS: I've reviewed it, sir.

24 BY MR. JACOBS:

05:56 25 Q. Okay. Let me just bring that up. How many pages is that

1 letter?

2 A. 14 pages, sir.

3 Q. And is it signed and dated?

4 A. Yes, sir, there's a signature on the numbered page 9.

05:57 5 Q. And what's the date?

6 A. July 11th, 2007. There's additional dates on the following
7 page as well. Appears to be another letter entitled,
8 "Affidavit," with a date of July 11th of '07, as well.

9 Q. Let's just start with the paragraph beginning at the bottom
05:57 10 of the first page. Can you read that? I'm going to skip to the
11 top. Do you have the first page? That Exhibit 44.

12 A. Yes, sir.

13 Q. Okay. Paragraph numbered 2.

14 A. "As the man, being a corporation sole and acting in the
05:58 15 capacity as Steward who has loaned" -- Steward is spelled
16 S T E W A R D -- "who has loaned his consciousness and physical
17 capacity to and acts in the capacity as the Office of Trustee
18 for the James A. Stuart, Jr. Trust has recently learned the
19 government between the taxpayer and the United States Government
05:58 20 USG," in parentheses, "a municipal corporation is complex and
21 confusing. When filing the initial 2005 income tax return the
22 man, being a sovereign human being, erroneously believed that he
23 was the taxpayer, however, has since learned the truth of the
24 relationship between the Trust and the USG and, therefore, is
05:59 25 amending and refiling the Form 4852 filing for the year 2005."

1 Q. Why don't you continue with paragraphs 3, 4 and 5.

2 A. Paragraph 3. "The taxpayer is James A. Stuart, Jr.," in
3 parentheses, "Trust, which is also the entity in possession of a
4 Social Security number," in parentheses, "hereinafter SSN.

05:59 5 "4. Said Trust engages in employment for compensation
6 for personal services actually rendered.

7 "5. Said Trust has an employment relationship with
8 New Age Chemical, Ltd.," parentheses, "previously New Age
9 Chemical, Inc., hereinafter SSNI, in Wisconsin."

06:00 10 Q. All right.

11 THE COURT: That will have to be the last word for
12 today. It is now 6:00 p.m. Our day is at a close.

13 Members of the jury, you may take your notebooks with
14 you to the jury room. Please have a good evening and, of
06:00 15 course, do not discuss this case or allow anyone to discuss this
16 case with you. Keep an open mind. Do not do any research and,
17 of course, that means you cannot do any blogging or any such
18 media during the course of this trial as it may relate to this
19 case.

06:00 20 THE BAILIFF: All rise.

21 (Jury out at 6:00 p.m.)

22 THE COURT: Be seated, please.

23 I just want to get an update from you respecting how
24 much additional time the government believes it will need with
06:01 25 this witness and what it projects will be the case in chief with

1 regard to your last summary witness.

2 MR. JACOBS: Judge, I would expect no more than 20
3 minutes with Special Agent Rech, and that our summary witness I
4 expect should take a half an hour.

06:01 5 THE COURT: All right. And that being so I would
6 imagine you will be able to conclude your testimony no later
7 than 10:00 o'clock.

8 MR. JACOBS: Yeah. Starting at 8:30, am I right,
9 Judge?

06:02 10 THE COURT: Yes. All right. So the defense should be
11 prepared at that time.

12 MR. BERNHOFT: Your Honor, could I have about four,
13 five minutes to counsel with my client? I'd like to make a
14 scheduling advisement to the court. I think it would be
06:02 15 beneficial to everybody.

16 THE COURT: All right, very well. We'll take a short
17 break.

18 (Recess taken at 6:02 p.m., until 6:06 p.m.)

19 THE COURT: We'll go back on the record.

06:07 20 MR. BERNHOFT: Your Honor?

21 THE COURT: Yes.

22 MR. BERNHOFT: I've consulted with my client and
23 conferred with my colleague, and I wanted to give the court an
24 advance advisement that my client is not going to be taking the
06:07 25 stand and testifying in his own defense. And the defense has no

1 other witnesses to call for its defense in chief. The defense's
2 intention is to rise on the record and rest upon the close of
3 all evidence for the prosecution's case in chief and then the
4 admission of remaining stipulated evidence, et cetera and the
06:07 5 administrative business that we have.

6 THE COURT: All right.

7 MR. BERNHOFT: So that's my advisement to the court.

8 THE COURT: Mr. Stuart, you've heard your attorney
9 state that he has conferred with you and you have decided that
06:07 10 you do not wish to testify at the conclusion of the government's
11 case.

12 THE DEFENDANT: That's correct.

13 THE COURT: Do you understand that you have an
14 absolute right to testify in this case?

06:08 15 THE DEFENDANT: Yes, sir, I do.

16 THE COURT: And do you understand that no one can take
17 that right away from you and you must make the decision for
18 yourself as to whether you wish to testify?

19 THE DEFENDANT: Yes, I do.

06:08 20 THE COURT: Do you believe that you are proceeding in
21 that regard freely and voluntarily?

22 THE DEFENDANT: Yes, I am.

23 THE COURT: Has anyone used any threat, force or
24 intimidation to get you to waive your right to testify in this
06:08 25 case?

1 THE DEFENDANT: No, there's not been.

2 THE COURT: Very well. The court does find that the

3 defendant James A. Stuart, Jr. has knowingly and voluntarily

4 waived his right to testify in this proceeding. However,

06:08 5 inasmuch as the government has not rested its case,

6 circumstances may change, the court will check once again at the

7 end of the government's case at side bar to confirm whether or

8 not you have changed your mind, and that way it will not be

9 necessary for the jury to leave the courtroom and we can proceed

06:09 10 with dispatch. All right?

11 THE DEFENDANT: That sounds fair to me.

12 THE COURT: Very well. Is there anything else at this

13 time?

14 MR. BERNHOFT: Your Honor, in terms of, assuming as is

06:09 15 highly likely that even upon the close of the government's

16 evidence that we'll go to side bar and confer again and confirm,

17 in terms of further scheduling I think Mr. Jacobs is taking

18 Special Agent Rech for another 20 minutes, I probably have 15

19 minutes of cross, and then we have the comp witness for the

06:09 20 government. What were the court's thoughts in terms of jury

21 instruction charging conference and the closing argument for our

22 scheduling purposes?

23 THE COURT: Well, at the very least it will be

24 necessary for us to break at 12:00 o'clock for another case

06:09 25 involving a boat, an admiralty proceeding.

1 MR. BERNHOFT: Admiralty law.

2 THE COURT: Yes. Yes. So it depends on whether or
3 not we have some time before noon to confer.

4 I'm curious, therefore, whether there are any issues
06:10 5 respecting the instructions that you know of at this point in
6 time. And if you need to look at the instructions as currently
7 crafted what I will do is hand you another set of instructions
8 so you can look at them overnight and tell me tomorrow morning
9 if you see anything in the instructions as crafted that needs
06:10 10 attention. And if so, we will discuss them off the record to
11 make sure that we're all in agreement or any disagreements are
12 known. We will then go on the record and summarize any matters
13 that need attention or any objections that may be stated.

14 All right?

06:11 15 MR. BERNHOFT: What is the court's inclination in
16 terms of giving that in terms of closing argument and
17 preparation by counsel to close?

18 THE COURT: Well, I would envision having closings
19 tomorrow afternoon. Unless there is something that will drag
06:11 20 this matter out until the next day. I will tell you as it
21 stands right now my calendar is open for the balance of the day
22 on Wednesday, but Thursday it gets more dicey.

23 MR. JACOBS: Judge, at least what I was thinking
24 Mr. Bernhoft was saying, we just want to make sure at least we
06:11 25 get the lunch hour to prepare for closings because it could be

1 we could be ready technically before lunch but it would be
2 cramped, and so at least give us least enough time to --

3 THE COURT: Well, I have an hour and a half for lunch.

4 MR. JACOBS: Yes. But that we won't do closings
5 before lunch.

6 THE COURT: Oh, definitely not. No.

7 MR. JACOBS: Okay. Maybe I was misreading but -- you
8 know, I think we've done a pretty good job cramming this into a
9 relatively short period of time.

10 THE COURT: I appreciate it, believe me.

11 MR. JACOBS: Thank you, Judge.

12 MR. BERNHOFT: Thank you, Judge.

13 THE COURT: All right.

14 THE BAILIFF: All rise.

15 (Proceedings concluded for the day at 6:12 p.m.)

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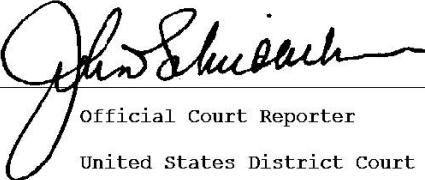
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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WISCONSIN
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4 I, JOHN T. SCHINDHELM, RMR, CRR, Official Court
5 Reporter for the United States District Court, Eastern District
6 of Wisconsin, do hereby certify that I reported the foregoing
7 proceedings, and that the same is true and correct in accordance
8 with my original machine shorthand notes taken at said time and
9 place.

10 Dated this 16th day of December, 2011,
11 Milwaukee, Wisconsin.

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13 _____
14 Official Court Reporter
United States District Court

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23
24
25

I N D E X

<u>WITNESS</u>	<u>EXAMINATION</u>	<u>PAGE</u>
KRISTY MORGAN, GOVERNMENT WITNESS		
	CROSS-EXAMINATION BY MR. BERNHOFT.....	69
	REDIRECT EXAMINATION BY MR. JACOBS.....	120
DAVID SCHWARZ, GOVERNMENT WITNESS		
	DIRECT EXAMINATION BY MR. JACOBS.....	136
BEVERLY SCHLIPP, GOVERNMENT WITNESS		
	DIRECT EXAMINATION BY MR. JACOBS.....	152
TRIAL STIPULATION NO. 6		
	ADMITTED.....	160
	CROSS-EXAMINATION BY MR. BERNHOFT.....	184
ALLISON REESE, GOVERNMENT WITNESS		
	DIRECT EXAMINATION BY MR. JACOBS.....	189
	CROSS-EXAMINATION BY MR. BERNHOFT.....	217
	REDIRECT EXAMINATION BY MR. JACOBS.....	220
PATRICK WALSH, GOVERNMENT WITNESS		
	DIRECT EXAMINATION BY MR. JACOBS.....	223
	EXAMINATION BY THE COURT.....	255
	CROSS-EXAMINATION BY MR. BERNHOFT.....	255
DANIEL HAU, GOVERNMENT WITNESS		
	DIRECT EXAMINATION BY MR. JACOBS.....	261
	CROSS-EXAMINATION BY MR. BERNHOFT.....	281
JOEL NETTESHEIM, GOVERNMENT WITNESS		
	DIRECT EXAMINATION BY MR. JACOBS.....	284

1	CROSS-EXAMINATION BY MR. BERNHOFT.....	299
2	REDIRECT EXAMINATION BY MR. JACOBS.....	304
3	MATTHEW RECH III, GOVERNMENT WITNESS	
4	DIRECT EXAMINATION BY MR. JACOBS.....	306
5	TRIAL STIPULATION NO. 7	
6	ADMITTED.....	318

7

8

9

E X H I B I T S

10

11

12

13

14

15

16

17

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19

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21

22

23

24

25

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>OFFERED</u>	<u>ADMITTED</u>
20	111605 IRS-Stuart letter.....	70	70
21	Undated letter from Stuart to IRS responding ..	72	72
	to 11/16/05 IRS letter		
22	1/9/06 IRS-Stuart letter.....	73	73
23	1/24/06 Stuart submission to IRS.....	75	75
24	3/9/2006 Stuart submission to IRS.....	78	78
25	4/11/06 Stuart letter to IRS.....	236	236
26	6/28/06 Stuart response to IRS.....	122	122
26	6/28/06 Stuart response to IRS.....	236	236
28	8/2/06 Stuart letter to IRS.....	103	103
28	8/2/06 Stuart letter to IRS.....	236	236
29	8/28/06 Stuart letter to IRS.....	105	105
33	10/6/06 Stuart letter to IRS.....	109	109
36	4/10/07 Stuart letter to IRS.....	110	110
44	7/11/07 Notice and Demand "Trust".....	331	331

1	45	7/25/07 Stuart letter to IRS.....	118	118
2	47	8/6/07 Stuart to IRS letter.....	119	119
3	51	9/26/07 Stuart letter to IRS.....	132	132
4	52	12/3/07 Stuart letter to IRS.....	130	130
5	59	1/22/09 Stuart-Secy of Treasury letter.....	329	329
6	60	JPMorgan Chase Bank record(s) for New Age	161	161
7		Chemical		
8	61	JPMorgan Chase Bank record(s) for New Age	161	161
9		Chemical		
10	62	JPMorgan Chase Bank record(s) for New Age	161	161
11		Chemical		
12	63	JPMorgan Chase Bank record(s) for New Age	161	161
13		Chemical		
14	64	JPMorgan Chase Bank record(s) for New Age	161	161
15		Chemical		
16	65	JPMorgan Chase Bank record(s) for New Age	161	161
17		Chemical		
18	66	JPMorgan Chase Bank record(s) for New Age	161	161
19		Chemical		
20	67	JPMorgan Chase Bank record(s) for New Age	161	161
21		Chemical		
22	68	JPMorgan Chase Bank record(s) for New Age	161	161
23		Chemical		
24	69	JPMorgan Chase Bank record(s) for New Age	161	161
25		Chemical		

1	70	JPMorgan Chase Bank record(s) for New Age	161	161
2		Chemical		
3	113	3/24/06 Stuart-Walsh e-mail.....	247	247
4	115	Article 2006 IRS Dirty Dozen.....	250	250
5	132	New Age Chem Form 1120S and state tax returns .	292	292
6		FYE 9/30/07		
7	135	12/31/08 New Age Chem, Ltd. Year-end	295	295
8		books/records		
9	136	12/31/08 New Age Chem, Ltd. Year-end	295	295
10		books/records		
11	137	New Age Chemical Form 1120S FYE 9/30/07.....	272	272
12	138	Stuart K-1 FYE 9/30/07.....	273	273
13	139	2/6/08 Stuart-Hau e-mail.....	278	278
14	140	2/7/08 Hau-Stuart e-mail.....	277	277
15	150	2005 Form 1099.....	309	309
16	151	2006 Form 1099.....	309	309
17	152	Correspondence between Stuart/New Age and	140	140
18		PDS.		
19	153	2005-2006 Check Register Reports.....	309	309
20	154	10/13/2006 through 12/14/2007 Journal Detail ..	309	309
21		Report		
22	155	Withholding Statement.....	309	309
23	156	2005 Form W-3.....	309	309
24	157	9/30/03 Form 1120S.....	315	315
25	158	9/30/03 Schedule K-1.....	315	315

1	159	9/30/04 Form 1120S.....	315	315
2	160	9/30/04 Schedule K-1.....	315	315
3	161	9/30/05 Form 1120S.....	315	315
4	162	9/30/05 Schedule K-1 for Stuart.....	315	315
5	163	9/30/06 Form 1120S.....	315	315
6	164	9/30/06 Schedule K-1 for Stuart.....	315	315
7	165	9/30/07 Form 1120S.....	315	315
8	166	9/30/07 Schedule K-1.....	315	315
9	170	11/9/09 Stuart-Evans correspondence.....	328	328
10	171	2005 summary of payments to Stuart.....	322	322
11	172	2006 summary of payments to Stuart.....	322	322
12	173	2007 summary of payments to Stuart.....	322	322
13	1001	4/5/06 86C letter.....	80	80
14	1002	4/11/06 IRS Appeals Office letter to Mr. And ..	82	82
15		Mrs. Stuart		
16	1003	4/11/06 Stuart letter to IRS.....	83	83
17	1004	5/16/06 2654C letter.....	91	91
18	1005	5/19/06 Stuart letter.....	94	94
19	1006	6/13/06 letter from Stuart.....	96	96
20	1007	6/26/06 2645C letter.....	97	97
21	1008	7/3/06 2644C letter.....	98	98
22	1009	7/21/06 Stuart letter.....	100	100
23	1012	8/9/06 2644C letter.....	104	104
24	1014	9/12/06 2645C letter.....	107	107
25	1017	6/8/07 NACChem letter to Parizek.....	113	113